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PART - IV

Republication of Act, Bills, Ordinances etc. and Rules thereunder

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd September, 2017/Bhadra 11, 1939 (Saka)

THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) AMENDMENT ORDINANCE, 2017

No. 5 OF 2017

Promulgated by the President in the Sixty-eighth Year of the Republic of India.

An Ordinance to amend the Goods and Services Tax (Compensation to States) Act, 2017.

WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Goods and Services Tax (Compensation to States) Amendment Ordinance, 2017.

(2) It shall come into force at once.

Short title
and
commencement.

Amendment
to Schedule.

2. (1) In the Goods and Services Tax (Compensation to States) Act, 2017, in the Schedule,— 13 of 2017.

(i) after serial number 4 and the entries relating thereto, the following serial number shall be inserted, namely:—

(1)	(2)	(3)	(4)
“4A	Motor vehicles for the transport of not more than thirteen persons, including the driver.	8702 10, 8702 20, 8702 30 or 8702 90	Twenty-five per cent. <i>ad valorem</i> .”;

(ii) against serial number 5, for the entry in column (4), the entry “Twenty-five per cent. *ad valorem*” shall be substituted.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

MINISTRY OF LAW AND JUSTICE**(Legislative Department)***New Delhi, the 7th April, 2017/Chaitra 17, 1939 (Saka)*

The following Act of Parliament received the assent of the President on the 7th April, 2017, and is hereby published for general information:—

THE MENTAL HEALTHCARE ACT, 2017

No. 10 OF 2017

[7th April, 2017.]

An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.

WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008;

AND WHEREAS India has signed and ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is necessary to align and harmonise the existing laws with the said Convention.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the Mental Healthcare Act, 2017.
- (2) It shall extend to the whole of India.

Short title,
extent and
commence-
ment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; or on the date of completion of the period of nine months from the date on which the Mental Healthcare Act, 2017 receives the assent of the President.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “advance directive” means an advance directive made by a person under section 5;

(b) “appropriate Government” means,—

(i) in relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government;

(ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

(c) “Authority” means the Central Mental Health Authority or the State Mental Health Authority, as the case may be;

(d) “Board” means the Mental Health Review Board constituted by the State Authority under sub-section (1) of section 80 in such manner as may be prescribed;

(e) “care-giver” means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration;

(f) “Central Authority” means the Central Mental Health Authority constituted under section 33;

(g) “clinical psychologist” means a person—

(i) having a recognised qualification in Clinical Psychology from an institution approved and recognised, by the Rehabilitation Council of India, constituted under section 3 of the Rehabilitation Council of India Act, 1992; or 34 of 1992.

(ii) having a Post-Graduate degree in Psychology or Clinical Psychology or Applied Psychology and a Master of Philosophy in Clinical Psychology or Medical and Social Psychology obtained after completion of a full time course of two years which includes supervised clinical training from any University recognised by the University Grants Commission established under the University Grants Commission Act, 1956 and approved and recognised by the Rehabilitation Council of India Act, 1992 or such recognised qualifications as may be prescribed; 3 of 1956. 34 of 1992.

(h) “family” means a group of persons related by blood, adoption or marriage;

(i) “informed consent” means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person;

(j) “least restrictive alternative” or “least restrictive environment” or “less

restrictive option” means offering an option for treatment or a setting for treatment which—

(i) meets the person’s treatment needs; and

(ii) imposes the least restriction on the person’s rights;

(k) “local authority” means a Municipal Corporation or Municipal Council, or Zilla Parishad, or Nagar Panchayat, or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the mental health establishment or empowered under any law for the time being in force, to function as a local authority in any city or town or village;

(l) “Magistrate” means—

2 of 1974.

(i) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate;

(ii) in relation to any other area, the Chief Judicial Magistrate, Sub-divisional Judicial Magistrate or such other Judicial Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act;

(m) “medical officer in charge” in relation to any mental health establishment means the psychiatrist or medical practitioner who, for the time being, is in charge of that mental health establishment;

(n) “medical practitioner” means a person who possesses a recognised medical qualification—

102 of 1956.

(i) as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in the State Medical Register, as defined in clause (k) of that section; or

48 of 1970.

(ii) as defined in clause (h) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 1970, and whose name has been entered in a State Register of Indian Medicine, as defined in clause (j) of sub-section (1) of that section; or

59 of 1973.

(iii) as defined in clause (g) of sub-section (1) of section 2 of the Homoeopathy Central Council Act, 1973, and whose name has been entered in a State Register of Homoeopathy, as defined in clause (i) of sub-section (1) of that section;

(o) “Mental healthcare” includes analysis and diagnosis of a person’s mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness;

(p) “mental health establishment” means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends;

(q) “mental health nurse” means a person with a diploma or degree in general nursing or diploma or degree in psychiatric nursing recognised by the Nursing Council of India established under the Nursing Council of India Act, 1947 and registered as such with the relevant nursing council in the State; 38 of 1947.

(r) “mental health professional” means—

(i) a psychiatrist as defined in clause (x); or

(ii) a professional registered with the concerned State Authority under section 55; or

(iii) a professional having a post-graduate degree (Ayurveda) in Mano Vigyan Avum Manas Roga or a post-graduate degree (Homoeopathy) in Psychiatry or a post-graduate degree (Unani) in Moalijat (Nafasiyatt) or a post-graduate degree (Siddha) in Sirappu Maruthuvam;

(s) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;

(t) “minor” means a person who has not completed the age of eighteen years;

(u) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(v) “prescribed” means prescribed by rules made under this Act;

(w) “prisoner with mental illness” means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison;

(x) “psychiatric social worker” means a person having a post-graduate degree in Social Work and a Master of Philosophy in Psychiatric Social Work obtained after completion of a full time course of two years which includes supervised clinical training from any University recognised by the University Grants Commission established under the University Grants Commission Act, 1956 or such recognised qualifications, as may be prescribed; 3 of 1956.

(y) “psychiatrist” means a medical practitioner possessing a post-graduate degree or diploma in psychiatry awarded by an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956, or awarded or recognised by the National Board of Examinations and included in the First Schedule to the Indian Medical Council Act, 1956, or recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 1956, and includes, in relation to any State, any medical officer who having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act; 3 of 1956. 102 of 1956.

(z) “regulations” means regulations made under this Act;

(za) “relative” means any person related to the person with mental illness by blood, marriage or adoption;

(zb) “State Authority” means the State Mental Health Authority established under section 45.

(2) The words and expressions used and not defined in this Act but defined in the Indian Medical Council Act, 1956 or the Indian Medicine Central Council Act, 1970 and not inconsistent with this Act shall have the meanings respectively assigned to them in those Acts. 102 of 1956. 48 of 1970.

CHAPTER II

MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTHCARE AND TREATMENT DECISIONS

3. (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.

Determination of mental illness.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,—

(a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person;

(b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

4. (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if such person has ability to—

Capacity to make mental healthcare and treatment decisions.

(a) understand the information that is relevant to take a decision on the treatment or admission or personal assistance; or

(b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance; or

(c) communicate the decision under sub-clause (a) by means of speech, expression, gesture or any other means.

(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

(3) Where a person makes a decision regarding his mental healthcare or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental healthcare or treatment decision, so long as the person has the capacity to make mental healthcare or treatment decision under sub-section (1).

CHAPTER III

ADVANCE DIRECTIVE

5. (1) Every person, who is not a minor, shall have a right to make an advance directive in writing, specifying any or all of the following, namely:—

Advance directive.

(a) the way the person wishes to be cared for and treated for a mental illness;

(b) the way the person wishes not to be cared for and treated for a mental illness;

(c) the individual or individuals, in order of precedence, he wants to appoint as his nominated representative as provided under section 14.

(2) An advance directive under sub-section (1) may be made by a person irrespective of his past mental illness or treatment for the same.

(3) An advance directive made under sub-section (1), shall be invoked only when such person ceases to have capacity to make mental healthcare or treatment decisions and shall remain effective until such person regains capacity to make mental healthcare or treatment decisions.

(4) Any decision made by a person while he has the capacity to make mental healthcare and treatment decisions shall over-ride any previously written advance directive by such person.

(5) Any advance directive made contrary to any law for the time being in force shall be *ab initio* void.

Manner of making advance directive.

6. An advance directive shall be made in the manner as may be specified by the regulations made by the Central Authority.

Maintenance of online register.

7. Subject to the provisions contained in clause (a) of sub-section (1) of section 91, every Board shall maintain an online register of all advance directives registered with it and make them available to the concerned mental health professionals as and when required.

Revocation, amendment or cancellation of advance directive.

8. (1) An advance directive made under section 6 may be revoked, amended or cancelled by the person who made it at any time.

(2) The procedure for revoking, amending or cancelling an advance directive shall be the same as for making an advance directive under section 6.

Advance directive not to apply to emergency treatment.

9. The advance directive shall not apply to the emergency treatment given under section 103 to a person who made the advance directive.

Duty to follow advance directive.

10. It shall be the duty of every medical officer in charge of a mental health establishment and the psychiatrist in charge of a person's treatment to propose or give treatment to a person with mental illness, in accordance with his valid advance directive, subject to section 11.

Power to review, alter, modify or cancel advance directive.

11. (1) Where a mental health professional or a relative or a care-giver of a person desires not to follow an advance directive while treating a person with mental illness, such mental health professional or the relative or the care-giver of the person shall make an application to the concerned Board to review, alter, modify or cancel the advance directive.

(2) Upon receipt of the application under sub-section (1), the Board shall, after giving an opportunity of hearing to all concerned parties (including the person whose advance directive is in question), either uphold, modify, alter or cancel the advance directive after taking into consideration the following, namely:—

(a) whether the advance directive was made by the person out of his own free will and free from force, undue influence or coercion; or

(b) whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated; or

(c) whether the person was sufficiently well informed to make the decision; or

(d) whether the person had capacity to make decisions relating to his mental healthcare or treatment when such advanced directive was made; or

(e) whether the content of the advance directive is contrary to other laws or constitutional provisions.

(3) The person writing the advance directive and his nominated representative shall have a duty to ensure that the medical officer in charge of a mental health establishment or a medical practitioner or a mental health professional, as the case may be, has access to the advance directive when required.

(4) The legal guardian shall have right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, *mutatis mutandis*, shall apply to such minor till such time he attains majority.

12. (1) The Central Authority shall regularly and periodically review the use of advance directives and make recommendations in respect thereof.

Review of
advance
directives.

(2) The Central Authority in its review under sub-section (1) shall give specific consideration to the procedure for making an advance directive and also examine whether the existing procedure protects the rights of persons with mental illness.

(3) The Central Authority may modify the procedure for making an advance directive or make additional regulations regarding the procedure for advance directive to protect the rights of persons with mental illness.

13. (1) A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences on following a valid advance directive.

Liability of
medical
health
professional
in relation to
advance
directive.

(2) The medical practitioner or mental health professional shall not be held liable for not following a valid advance directive, if he has not been given a copy of the valid advance directive.

CHAPTER IV

NOMINATED REPRESENTATIVE

14. (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 5, every person who is not a minor, shall have a right to appoint a nominated representative.

Appoint-
ment and
revocation
of nominated
representa-
tive.

(2) The nomination under sub-section (1) shall be made in writing on plain paper with the person's signature or thumb impression of the person referred to in that sub-section.

(3) The person appointed as the nominated representative shall not be a minor, be competent to discharge the duties or perform the functions assigned to him under this Act, and give his consent in writing to the mental health professional to discharge his duties and perform the functions assigned to him under this Act.

(4) Where no nominated representative is appointed by a person under sub-section (1), the following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of a person with mental illness, namely:—

(a) the individual appointed as the nominated representative in the advance directive under clause (c) of sub-section (1) of section 5; or

(b) a relative, or if not available or not willing to be the nominated representative of such person; or

(c) a care-giver, or if not available or not willing to be the nominated representative of such person; or

(d) a suitable person appointed as such by the concerned Board; or

(e) if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness:

Provided that a person representing an organisation registered under the Societies Registration Act, 1860 or any other law for the time being in force, working for persons with mental illness, may temporarily be engaged by the mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the concerned Board.

21 of 1860.

(5) The representative of the organisation, referred to in the proviso to sub-section (4), may make a written application to the medical officer in-charge of the mental health establishment or the psychiatrist in-charge of the person's treatment, and such medical officer or psychiatrist, as the case may be, shall accept him as the temporary nominated representative, pending appointment of a nominated representative by the concerned Board.

(6) A person who has appointed any person as his nominated representative under this section may revoke or alter such appointment at any time in accordance with the procedure laid down for making an appointment of nominated representative under sub-section (1).

(7) The Board may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(8) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his mental healthcare or treatment.

(9) All persons with mental illness shall have capacity to make mental healthcare or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

Nominated
representative
of minor.

15. (1) Notwithstanding anything contained in section 14, in case of minors, the legal guardian shall be their nominated representative, unless the concerned Board orders otherwise under sub-section (2).

(2) Where on an application made to the concerned Board, by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it, the concerned Board is of the opinion that,—

(a) the legal guardian is not acting in the best interests of the minor; or

(b) the legal guardian is otherwise not fit to act as the nominated representative of the minor,

it may appoint, any suitable individual who is willing to act as such, the nominated representative of the minor with mental illness:

Provided that in case no individual is available for appointment as a nominated representative, the Board shall appoint the Director in the Department of Social Welfare of the State in which such Board is located, or his nominee, as the nominated representative of the minor with mental illness.

Revocation,
alteration, etc.,
of nominated
representative
by Board.

16. The Board, on an application made to it by the person with mental illness, or by a relative of such person, or by the psychiatrist responsible for the care of such person, or by the medical officer in-charge of the mental health establishment where the individual is admitted or proposed to be admitted, may revoke, alter or modify the order made under clause (e) of sub-section (4) of section 14 or under sub-section (2) of section 15.

Duties of
nominated
representative.

17. While fulfilling his duties under this Act, the nominated representative shall—

(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

- (b) give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;
- (c) provide support to the person with mental illness in making treatment decisions under section 89 or section 90;
- (d) have right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;
- (e) have access to the family or home based rehabilitation services as provided under clause (c) of sub-section (4) of section 18 on behalf of and for the benefit of the person with mental illness;
- (f) be involved in discharge planning under section 98;
- (g) apply to the mental health establishment for admission under section 87 or section 89 or section 90;
- (h) apply to the concerned Board on behalf of the person with mental illness for discharge under section 87 or section 89 or section 90;
- (i) apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;
- (j) appoint a suitable attendant under sub-section (5) or sub-section (6) of section 87;
- (k) have the right to give or withhold consent for research under circumstances mentioned under sub-section (3) of section 99.

CHAPTER V

RIGHTS OF PERSONS WITH MENTAL ILLNESS

18. (1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

Right to access mental-health care.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

(3) The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

(4) Without prejudice to the generality of range of services under sub-section (3), such services shall include—

- (a) provision of acute mental healthcare services such as outpatient and inpatient services;
- (b) provision of half-way homes, sheltered accommodation, supported accommodation as may be prescribed;
- (c) provision for mental health services to support family of person with mental illness or home based rehabilitation;
- (d) hospital and community based rehabilitation establishments and services as may be prescribed;
- (e) provision for child mental health services and old age mental health services.

(5) The appropriate Government shall,—

- (a) integrate mental health services into general healthcare services at all levels

of healthcare including primary, secondary and tertiary healthcare and in all health programmes run by the appropriate Government;

(b) provide treatment in a manner, which supports persons with mental illness to live in the community and with their families;

(c) ensure that the long term care in a mental health establishment for treatment of mental illness shall be used only in exceptional circumstances, for as short a duration as possible, and only as a last resort when appropriate community based treatment has been tried and shown to have failed;

(d) ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides;

(e) ensure that as a minimum, mental health services run or funded by Government shall be available in each district;

(f) ensure, if minimum mental health services specified under sub-clause (e) of sub-section (4) are not available in the district where a person with mental illness resides, that the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such establishments in that district will be borne by the appropriate Government:

Provided that till such time the services under this sub-section are made available in a health establishment run or funded by the appropriate Government, the appropriate Government shall make rules regarding reimbursement of costs of treatment at such mental health establishment.

(6) The appropriate Government shall make available a range of appropriate mental health services specified under sub-section (4) of section 18 at all general hospitals run or funded by such Government and basic and emergency mental healthcare services shall be available at all community health centres and upwards in the public health system run or funded by such Government.

(7) Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other mental health establishments designated by it.

(8) The appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no discrimination be made in quality of services provided to persons with mental illness.

(9) The minimum quality standards of mental health services shall be as specified by regulations made by the State Authority.

(10) Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system:

Provided that where the health professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognised by the Central Government are available in any health establishment, the essential medicines from any similar list relating to the appropriate ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems shall also be made available free of cost to all persons with mental illness.

(11) The appropriate Government shall take measures to ensure that necessary budgetary provisions in terms of adequacy, priority, progress and equity are made for effective implementation of the provisions of this section.

Explanation.—For the purposes of sub-section (11), the expressions—

(i) “adequacy” means in terms of how much is enough to offset inflation;

(ii) “priority” means in terms of compared to other budget heads;

(iii) “equity” means in terms of fair allocation of resources taking into account the health, social and economic burden of mental illness on individuals, their families and care-givers;

(iv) “progress” means in terms of indicating an improvement in the State’s response.

19. (1) Every person with mental illness shall,—

Right to community living.

(a) have a right to live in, be part of and not be segregated from society; and

(b) not continue to remain in a mental health establishment merely because he does not have a family or is not accepted by his family or is homeless or due to absence of community based facilities.

(2) Where it is not possible for a mentally ill person to live with his family or relatives, or where a mentally ill person has been abandoned by his family or relatives, the appropriate Government shall provide support as appropriate including legal aid and to facilitate exercising his right to family home and living in the family home.

(3) The appropriate Government shall, within a reasonable period, provide for or support the establishment of less restrictive community based establishments including half-way homes, group homes and the like for persons who no longer require treatment in more restrictive mental health establishments such as long stay mental hospitals.

20. (1) Every person with mental illness shall have a right to live with dignity.

Right to protection from cruel, inhuman and degrading treatment.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely:—

(a) to live in safe and hygienic environment;

(b) to have adequate sanitary conditions;

(c) to have reasonable facilities for leisure, recreation, education and religious practices;

(d) to privacy;

(e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity;

(f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;

(g) to have adequate provision for preparing for living in the community;

(h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women’s personal hygiene be adequately addressed by providing access to items that may be required during menstruation;

(i) to not be subject to compulsory tonsuring (shaving of head hair);

(j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and

(k) to be protected from all forms of physical, verbal, emotional and sexual abuse.

Right to
equality and
non- discrimi-
nation.

21. (1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare which shall include the following, namely:—

(a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability;

(b) emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;

(c) persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;

(d) living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and

(e) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

(2) A child under the age of three years of a woman receiving care, treatment or rehabilitation at a mental health establishment shall ordinarily not be separated from her during her stay in such establishment:

Provided that where the treating Psychiatrist, based on his examination of the woman, and if appropriate, on information provided by others, is of the opinion that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the woman during her stay at the mental health establishment:

Provided further that the woman shall continue to have access to the child under such supervision of the staff of the establishment or her family, as may be appropriate, during the period of separation.

(3) The decision to separate the woman from her child shall be reviewed every fifteen days during the woman's stay in the mental health establishment and separation shall be terminated as soon as conditions which required the separation no longer exist:

Provided that any separation permitted as per the assessment of a mental health professional, if it exceeds thirty days at a stretch, shall be required to be approved by the respective Authority.

(4) Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.

Right to
information.

22. (1) A person with mental illness and his nominated representative shall have the rights to the following information, namely:—

(a) the provision of this Act or any other law for the time being in force under which he has been admitted, if he is being admitted, and the criteria for admission under that provision;

(b) of his right to make an application to the concerned Board for a review of the admission;

(c) the nature of the person's mental illness and the proposed treatment plan which includes information about treatment proposed and the known side effects of the proposed treatment;

(d) receive the information in a language and form that such person receiving the information can understand.

(2) In case complete information cannot be given to the person with mental illness at the time of the admission or the start of treatment, it shall be the duty of the medical officer or psychiatrist in-charge of the person's care to ensure that full information is provided promptly when the individual is in a position to receive it:

Provided that where the information has not been given to the person with mental illness at the time of the admission or the start of treatment, the medical officer or psychiatrist in charge of the person's care shall give the information to the nominated representative immediately.

23. (1) A person with mental illness shall have the right to confidentiality in respect of his mental health, mental healthcare, treatment and physical healthcare.

Right to confidentiality.

(2) All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely:—

(a) release of information to the nominated representative to enable him to fulfil his duties under this Act;

(b) release of information to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental illness;

(c) release of information if it is necessary to protect any other person from harm or violence;

(d) only such information that is necessary to protect against the harm identified shall be released;

(e) release only such information as is necessary to prevent threat to life;

(f) release of information upon an order by concerned Board or the Central Authority or High Court or Supreme Court or any other statutory authority competent to do so; and

(g) release of information in the interests of public safety and security.

24. (1) No photograph or any other information relating to a person with mental illness undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness.

Restriction on release of information in respect of mental illness.

(2) The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.

25. (1) All persons with mental illness shall have the right to access their basic medical records as may be prescribed.

Right to access medical records.

(2) The mental health professional in charge of such records may withhold specific information in the medical records if disclosure would result in,—

(a) serious mental harm to the person with mental illness; or

(b) likelihood of harm to other persons.

(3) When any information in the medical records is withheld from the person, the mental health professional shall inform the person with mental illness of his right to apply to the concerned Board for an order to release such information.

Right to personal contacts and communication.

26. (1) A person with mental illness admitted to a mental health establishment shall have the right to refuse or receive visitors and to refuse or receive and make telephone or mobile phone calls at reasonable times subject to the norms of such mental health establishment.

(2) A person with mental illness admitted in a mental health establishment may send and receive mail through electronic mode including through e-mail.

(3) Where a person with mental illness informs the medical officer or mental health professional in charge of the mental health establishment that he does not want to receive mail or email from any named person in the community, the medical officer or mental health professional in charge may restrict such communication by the named person with the person with mental illness.

(4) Nothing contained in sub-sections (1) to (3) shall apply to visits from, telephone calls to, and from mail or e-mail to, and from individuals, specified under clauses (a) to (f) under any circumstances, namely:—

- (a) any Judge or officer authorised by a competent court;
- (b) members of the concerned Board or the Central Authority or the State Authority;
- (c) any member of the Parliament or a Member of State Legislature;
- (d) nominated representative, lawyer or legal representative of the person;
- (e) medical practitioner in charge of the person's treatment;
- (f) any other person authorised by the appropriate Government.

Right to legal aid.

27. (1) A person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under this Act.

(2) It shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.

39 of 1987.

Right to make complaints about deficiencies in provision of services.

28. (1) Any person with mental illness or his nominated representative, shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to,—

- (a) the medical officer or mental health professional in charge of the establishment and if not satisfied with the response;
- (b) the concerned Board and if not satisfied with the response;
- (c) the State Authority.

(2) The provisions for making complaint in sub-section (1), is without prejudice to the rights of the person to seek any judicial remedy for violation of his rights in a mental health establishment or by any mental health professional either under this Act or any other law for the time being in force.

CHAPTER VI

DUTIES OF APPROPRIATE GOVERNMENT

Promotion of mental health and preventive programmes.

29. (1) The appropriate Government shall have a duty to plan, design and implement programmes for the promotion of mental health and prevention of mental illness in the country.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the appropriate Government shall, in particular, plan, design and implement public health programmes to reduce suicides and attempted suicides in the country.

30. The appropriate Government shall take all measures to ensure that,—

(a) the provisions of this Act are given wide publicity through public media, including television, radio, print and online media at regular intervals;

(b) the programmes to reduce stigma associated with mental illness are planned, designed, funded and implemented in an effective manner;

(c) the appropriate Government officials including police officers and other officers of the appropriate Government are given periodic sensitisation and awareness training on the issues under this Act.

Creating awareness about mental health and illness and reducing stigma associated with mental illness.

31. (1) The appropriate Government shall take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes in collaboration with institutions of higher education and training, to increase the human resources available to deliver mental health interventions and to improve the skills of the available human resources to better address the needs of persons with mental illness.

Appropriate Government to take measures as regard to human resource development and training, etc.

(2) The appropriate Government shall, at the minimum, train all medical officers in public healthcare establishments and all medical officers in the prisons or jails to provide basic and emergency mental healthcare.

(3) The appropriate Government shall make efforts to meet internationally accepted guidelines for number of mental health professionals on the basis of population, within ten years from the commencement of this Act.

32. The appropriate Government shall take all measures to ensure effective co-ordination between services provided by concerned Ministries and Departments such as those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental health care.

Co-ordination within appropriate Government.

CHAPTER VII

CENTRAL MENTAL HEALTH AUTHORITY

33. **The Central Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the Central Mental Health Authority.**

Establishment of Central Authority.

34. (1) The Central Authority shall consist of the following, namely:—

Composition of Central Authority.

(a) Secretary or Additional Secretary to the Government of India in the Department of Health and Family Welfare—chairperson *ex officio*;

(b) Joint Secretary to the Government of India in the Department of Health and Family Welfare, in charge of mental health—member *ex officio*;

(c) Joint Secretary to the Government of India in the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy—member *ex officio*;

(d) Director General of Health Services—member *ex officio*;

(e) Joint Secretary to the Government of India in the Department of Disability Affairs of the Ministry of Social Justice and Empowerment—member *ex officio*;

(f) Joint Secretary to the Government of India in the Ministry of Women and Child Development—member *ex officio*;

(g) Directors of the Central Institutions for Mental Health—members *ex officio*;

(h) such other *ex officio* representatives from the relevant Central Government Ministries or Departments;

(i) one mental health professional as defined in item (iii) of clause (r) of sub-section (1) of section 2 having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(j) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(k) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(l) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the Central Government—member;

(m) two persons representing persons who have or have had mental illness, to be nominated by the Central Government—members;

(n) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the Central Government—members;

(o) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the Central Government—members;

(p) two persons representing areas relevant to mental health, if considered necessary.

(2) The members referred to in clauses (h) to (p) of sub-section (1), shall be nominated by the Central Government in such manner as may be prescribed.

35. (1) The members of the Central Authority referred to in clauses (h) to (p) of sub-section (1) of section 34 shall hold office as such for a term of three years from the date of nomination and shall be eligible for reappointment:

Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other *ex officio* members of the Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

36. A member of the Central Authority may, by notice in writing under his hand addressed to the Central Government, resign his office:

Term of office, salaries and allowances of chairperson and members.

Resignation.

Provided that a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon the office or until the expiry of his term of office, whichever is the earliest.

37. The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

Filling of vacancies.

38. No act or proceeding of the Central Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person as a member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of Central Authority.

39. Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Central Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Central Authority, and the member shall not take any part in any deliberation or decision of the Authority with respect to that matter.

Member not to participate in meetings in certain cases.

40. (1) There shall be a chief executive officer of the Authority, not below the rank of the Director to the Government of India, to be appointed by the Central Government.

Officers and other employees of Central Authority.

(2) The Authority may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required by the Central Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority shall be such as may be specified by regulations with the approval of the Central Government.

41. (1) The chief executive officer shall be the legal representative of the Central Authority and shall be responsible for—

Functions of chief executive officer of Central Authority.

- (a) the day-to-day administration of the Central Authority;
- (b) implementing the work programmes and decisions adopted by the Central Authority;
- (c) drawing up of proposal for the Central Authority's work programmes;
- (d) the preparation of the statement of revenue and expenditure and the execution of the budget of the Central Authority.

(2) Every year, the chief executive officer shall submit to the Central Authority for approval—

- (a) a general report covering all the activities of the Central Authority in the previous year;

- (b) programmes of work;
- (c) the annual accounts for the previous year; and
- (d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the Central Authority.

Transfer of assets, liabilities of Central Authority.

42. On the establishment of the Central Authority—

(a) all the assets and liabilities of the Central Authority for Mental Health Services constituted under sub-section (1) of section 3 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the Central Authority.

14 of 1987.

Explanation.—The assets of such Central Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such Unique Identification Authority of India and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Central Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said Central Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Central Authority;

(c) all sums of money due to the Central Authority for Mental Health Services immediately before that day shall be deemed to be due to the Central Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such Central Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the Central Authority.

Functions of Central Authority.

43. (1) The Central Authority shall—

(a) register all mental health establishments under the control of the Central Government and maintain a register of all mental health establishments in the country based on information provided by all State Mental Health Authorities of registered establishments and compile update and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments under the Central Government;

(c) supervise all mental health establishments under the Central Government and receive complaints about deficiencies in provision of services;

(d) maintain a national register of clinical psychologists, mental health nurses and psychiatric social workers based on information provided by all State Authorities of persons registered to work as mental health professionals for the purpose of this Act and publish the list (including online on the internet) of such registered mental health professionals;

(e) train all persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) advise the Central Government on all matters relating to mental healthcare and services;

(g) discharge such other functions with respect to matters relating to mental health as the Central Government may decide:

14 of 1987.

Provided that the mental health establishments under the control of the Central Government, before the commencement of this Act, registered under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the Central Authority.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the Central Government.

44. (1) The Central Authority shall meet at such times (not less than twice in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the Central Authority.

Meetings of
Central
Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the Central Authority, the senior-most member shall preside over the meeting of the Authority.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the Central Authority shall be authenticated by the signature of the chairperson or any other member authorised by the Central Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the Central Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the Authority with respect to that matter.

CHAPTER VIII

STATE MENTAL HEALTH AUTHORITY

45. Every State Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority.

Establishment
of State
Authority.

46. (1) The State Authority shall consist of the following chairperson and members:—

Composition
of State
Authority.

(a) Secretary or Principal Secretary in the Department of Health of State Government—chairperson *ex officio*;

(b) Joint Secretary in the Department of Health of the State Government, in charge of mental health—member *ex officio*;

(c) Director of Health Services or Medical Education—member *ex officio*;

(d) Joint Secretary in the Department of Social Welfare of the State Government—member *ex officio*;

(e) such other *ex officio* representatives from the relevant State Government Ministries or Departments;

(f) Head of any of the Mental Hospitals in the State or Head of Department of Psychiatry at any Government Medical College, to be nominated by the State Government—member;

(g) one eminent psychiatrist from the State not in Government service to be nominated by the State Government—member;

(h) one mental health professional as defined in item (iii) of clause (q) of sub-section (1) of section 2 having at least fifteen years experience in the field, to be nominated by the State Government—member;

(i) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the State Government—member;

(j) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the State Government—member;

(k) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the State Government—member;

(l) two persons representing persons who have or have had mental illness, to be nominated by the State Government—member;

(m) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the State Government—members;

(n) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the State Government—members.

(2) The members referred to in clauses (e) to (n) of sub-section (1), shall be nominated by the State Government in such manner as may be prescribed.

47. (1) The members of the State Authority referred to in clauses (e) to (n) of sub-section (1) of section 46 shall hold office as such for a term of three years from the date of nomination and shall be eligible for reappointment:

Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other *ex officio* members of the State Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

48. A member of the State Authority may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that a member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

49. The State Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

Term of office, salaries and allowances of chairperson and other members.

Resignation.

Filling of vacancies.

50. No act or proceeding of the State Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the State Authority; or
- (b) any defect in the appointment of a person as a member of the State Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of State Authority.

51. Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the State Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the State Authority, and the member shall not take any part in any deliberation or decision of the State Authority with respect to that matter.

Member not to participate in meetings in certain cases.

52. (1) There shall be a chief executive officer of the State Authority, not below the rank of the Deputy Secretary to the State Government, to be appointed by the State Government.

Officers and other employees of State Authority.

(2) The State Authority may, with the approval of the State Government, determine the number, nature and categories of other officers and employees required by the State Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the State Authority shall be such as may be specified by regulations with the approval of the State Government.

53. (1) The chief executive officer shall be the legal representative of the State Authority and shall be responsible for—

Functions of chief executive officer of State Authority.

- (a) the day-to-day administration of the State Authority;
- (b) implementing the work programmes and decisions adopted by the State Authority;
- (c) drawing up of proposal for the State Authority's work programmes;
- (d) the preparation of the statement of revenue and expenditure and the execution of the budget of the State Authority.

(2) Every year, the chief executive officer shall submit to the State Authority for approval—

- (a) a general report covering all the activities of the Authority in the previous year;
- (b) programmes of work;
- (c) the annual accounts for the previous year; and
- (d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the State Authority.

54. On and from the establishment of the State Authority—

Transfer of assets, liabilities of State Authority.

- (a) all the assets and liabilities of the State Authority for Mental Health Services constituted under sub-section (1) of section 4 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the State Authority.

Explanation.—The assets of such State Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such State Authority for Mental Health Services and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such State Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said State Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the State Authority;

(c) all sums of money due to the State Authority for Mental Health Services immediately before that day shall be deemed to be due to the State Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such State Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the State Authority.

55. (1) The State Authority shall—

(a) register all mental health establishments in the State except those referred to in section 43 and maintain and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments in the State;

(c) supervise all mental health establishments in the State and receive complaints about deficiencies in provision of services;

(d) register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals, and publish the list of such registered mental health professionals in such manner as may be specified by regulations by the State Authority;

(e) train all relevant persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) discharge such other functions with respect to matters relating to mental health as the State Government may decide:

Provided that the mental health establishments in the State (except those referred to in section 43), registered, before the commencement of this Act, under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the State Authority.

14 of 1987.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the State Government.

56. (1) The State Authority shall meet at such times (not less than four times in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the State Authority.

Functions of
State
Authority.

Meetings of
State Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the State Authority, the senior-most member shall preside over the meetings of the Authority.

(3) All questions which come up before any meeting of the State Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the State Authority shall be authenticated by the signature of the chairperson or any other member authorised by the State Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the State Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the State Authority with respect to that matter.

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

57. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government
to Central
Authority.

58. (1) There shall be constituted a Fund to be called the Central Mental Health Authority Fund and there shall be credited thereto—

Central
Mental Health
Authority
Fund.

(i) any grants and loans made to the Authority by the Central Government;

(ii) all fees and charges received by the Authority under this Act; and

(iii) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the Authority and the expenses of the Authority incurred in the discharge of its functions and for purposes of this Act.

59. (1) The Central Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government, in consultation with the Comptroller and Auditor-General of India.

Accounts and
audit of Central
Authority.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the same to be laid before each House of Parliament.

Annual report
of Central
Authority.

60. The Central Authority shall prepare in every year, in such form and at such time as may be prescribed by the Central Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the Central Government and the Central Government shall cause the same to be laid before both Houses of Parliament.

Grants by
State
Government.

61. The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the State Authority grants of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

State Mental
Health
Authority
Fund.

62. (1) There shall be constituted a Fund to be called the State Mental Health Authority Fund and there shall be credited thereto—

(i) any grants and loans made to the State Authority by the State Government;

(ii) all fees and charges received by the Authority under this Act; and

(iii) all sums received by the State Authority from such other sources as may be decided upon by the State Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the State Authority and the expenses of the State Authority incurred in the discharge of its functions and for purposes of this Act.

Accounts and
audit of State
Authority.

63. (1) The State Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the State Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the State Authority.

Annual report
of State
Authority.

64. The State Authority shall prepare in every year, in such form and at such time as may be prescribed by the State Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the State Government and the Government shall cause the same to be laid before the State Legislature.

CHAPTER X

MENTAL HEALTH ESTABLISHMENTS

Registration of
mental health
establishment.

65. (1) No person or organisation shall establish or run a mental health establishment unless it has been registered with the Authority under the provisions of this Act.

Explanation.—For the purposes of this Chapter, the expression “Authority” means—

(a) in respect of the mental health establishments under the control of the Central Government, the Central Authority;

(b) in respect of the mental health establishments in the State [not being the health establishments referred to in clause (a)], the State Authority.

(2) Every person or organisation who proposes to establish or run a mental health establishment shall register the said establishment with the Authority under the provisions of this Act:

Provided that the Central Government, may, by notification, exempt any category or class of existing mental health establishments from the requirement of registration under this Act.

23 of 2010.

Explanation.—In case a mental health establishment has been registered under the Clinical Establishments (Registration and Regulation) Act, 2010 or any other law for the time being in force in a State, such mental health establishment shall submit a copy of the said registration along with an application in such form as may be prescribed to the Authority with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority for the specific category of mental health establishment.

(3) The Authority shall, on receipt of application under sub-section (2), on being satisfied that such mental health establishment fulfils the standards specified by the Authority, issue a certificate of registration in such form as may be prescribed:

Provided that till the period the Authority specifies the minimum standards for different categories of mental health establishments, it shall issue a provisional certificate of registration to the mental health establishment:

Provided further that on specifying the minimum standards for different categories of mental health establishments, the mental health establishment referred to in the first proviso shall, within a period of six months from the date such standards are specified, submit to the Authority an undertaking stating therein that such establishment fulfils the specified minimum standards and on being satisfied that such establishment fulfils the minimum standards, the Authority shall issue a certificate of registration to such mental health establishment.

(4) Every mental health establishment shall, for the purpose of registration and continuation of registration, fulfil—

(a) the minimum standards of facilities and services as may be specified by regulations made by the Authority;

(b) the minimum qualifications for the personnel engaged in such establishment as may be specified by regulations made by the Authority;

(c) provisions for maintenance of records and reporting as may be specified by regulations made by the Authority; and

(d) any other conditions as may be specified by regulations made by the Authority.

(5) The Authority may—

(a) classify mental health establishments into such different categories, as may be specified by regulations made by the Central Authority;

(b) specify different standards for different categories of mental health establishments;

(c) while specifying the minimum standards for mental health establishments, have regard to local conditions.

(6) Notwithstanding anything in this section, the Authority shall, within a period of eighteen months from the commencement of this Act, by notification, specify the minimum standards for different categories of mental health establishments.

Procedure for registration, inspection and inquiry of mental health establishments.

66. (1) The mental health establishment shall, for the purpose of registration, submit an application, in such form, accompanied with such details and fees, as may be prescribed, to the Authority.

(2) The mental health establishment may submit the application in person or by post or online.

(3) Every mental health establishment, existing on the date of commencement of this Act, shall, within a period of six months from the date of constitution of the Authority, submit an application for its provisional registration to the Authority.

(4) The Authority shall, within a period of ten days from the date of receipt of such application, issue to the mental health establishment a certificate of provisional registration in such form and containing such particulars and information as may be prescribed.

(5) The Authority shall not be required to conduct any inquiry prior to issue of provisional registration.

(6) The Authority shall, within a period of forty-five days from the date of provisional registration, publish in print and in digital form online, all particulars of the mental health establishment.

(7) A provisional registration shall be valid for a period of twelve months from the date of its issue and be renewable.

(8) Where standards for particular categories of mental health establishments have been specified under this Act, the mental health establishments in that category shall, within a period of six months from date of notifying such standards, apply for that category and obtain permanent registration.

(9) The Authority shall publish the standards in print and online in digital format.

(10) Until standards for particular categories of mental health establishments are specified under this Act, every mental health establishment shall, within thirty days before the expiry of the validity of certificate of provisional registration, apply for a renewal of provisional registration.

(11) If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such fees, as may be prescribed.

(12) A mental health establishment shall make an application for permanent registration to the Authority in such form and accompanied with such fees as may be specified by regulations.

(13) The mental health establishment shall submit evidence that the establishment has complied with the specified minimum standards in such manner as may be specified by regulations by the Authority.

(14) As soon as the mental health establishment submits the required evidence of the mental health establishment having complied with the specified minimum standards, the Authority shall give public notice and display the same on its website for a period of thirty days, for filing objections, if any, in such manner as may be specified by regulations.

(15) The Authority shall, communicate the objections, if any, received within the period referred to in sub-section (14), to the mental health establishment for response within such period as the Authority may determine.

(16) The mental health establishment shall submit evidence of compliance with the standards with reference to the objections communicated to such establishment under sub-section (15), to the Authority within the specified period.

(17) The Authority shall on being satisfied that the mental health establishment fulfils the specified minimum standards for registration, grant permanent certificate of registration to such establishment.

(18) The Authority shall, within a period of forty-five days after the expiry of the period specified under this section, pass an order, either—

- (a) grant permanent certificate of registration; or
- (b) reject the application after recording the reasons thereof:

Provided that in case the Authority rejects the application under clause (b), it shall grant such period not exceeding six months, to the mental health establishment for rectification of the deficiencies which have led to rejection of the application and such establishment may apply afresh for registration.

(19) Notwithstanding anything contained in this section, if the Authority has neither communicated any objections received by it to the mental health establishment under sub-section (15), nor has passed an order under sub-section (18), the registration shall be deemed to have been granted by the Authority and the Authority shall provide a permanent certificate of registration.

67. (1) The Authority shall cause to be conducted an audit of all registered mental health establishments by such person or persons (including representatives of the local community) as may be prescribed, every three years, so as to ensure that such mental health establishments comply with the requirements of minimum standards for registration as a mental health establishment.

Audit of mental health establishment.

(2) The Authority may charge the mental health establishment such fee as may be prescribed, for conducting the audit under this section.

(3) The Authority may issue a show cause notice to a mental health establishment as to why its registration under this Act not be cancelled, if the Authority is satisfied that—

- (a) the mental health establishment has failed to maintain the minimum standards specified by the Authority; or
- (b) the person or persons or entities entrusted with the management of the mental health establishment have been convicted of an offence under this Act; or
- (c) the mental health establishment violates the rights of any person with mental illness.

(4) The Authority may, after giving a reasonable opportunity to the mental health establishment, if satisfied that the mental health establishment falls under clause (a) or clause (b) or clause (c) of sub-section (3), without prejudice to any other action which it may take against the mental health establishment, cancel its registration.

(5) Every order made under sub-section (4) shall take effect—

- (a) where no appeal has been preferred against such order, immediately on the expiry of the period specified for preferring of appeal; and
- (b) where the appeal has been preferred against such an order and the appeal has been dismissed, from the date of the order of dismissal.

(6) The Authority shall, on cancellation of the registration for reasons to be recorded in writing, restrain immediately the mental health establishment from carrying on its operations, if there is imminent danger to the health and safety of the persons admitted in the mental health establishment.

(7) The Authority may cancel the registration of a mental health establishment if recommended by the Board to do so.

Inspection and inquiry.

68. (1) The Authority may, *suo motu* or on a complaint received from any person with respect to non-adherence of minimum standards specified by or under this Act or contravention of any provision thereof, order an inspection or inquiry of any mental health establishment, to be made by such person as may be prescribed.

(2) The mental health establishment shall be entitled to be represented at such inspection or inquiry.

(3) The Authority shall communicate to the mental health establishment the results of such inspection or inquiry and may after ascertaining the opinion of the mental health establishment, order the establishment to make necessary changes within such period as may be specified by it.

(4) The mental health establishment shall comply with the order of the Authority made under sub-section (3).

(5) If the mental health establishment fails to comply with the order of the Authority made under sub-section (3), the Authority may cancel the registration of the mental health establishment.

(6) The Authority or any person authorised by it may, if there is any reason to suspect that any person is operating a mental health establishment without registration, enter and search in such manner as may be prescribed, and the mental health establishment shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry.

Appeal to High Court against order of Authority.

69. Any mental health establishment aggrieved by an order of the Authority refusing to grant registration or renewal of registration or cancellation of registration, may within a period of thirty days from such order, prefer an appeal to the High Court in the State:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Certificates, fees and register of mental health establishments.

70. (1) Every mental health establishment shall display the certificate of registration in a conspicuous place in the mental health establishment in such manner so as to be visible to everyone visiting the mental health establishment.

(2) In case the certificate is destroyed or lost or mutilated or damaged, the Authority may issue a duplicate certificate on the request of the mental health establishment and on the payment of such fees as may be prescribed.

(3) The certificate of registration shall be non-transferable and valid in case of change of ownership of the establishment.

(4) Any change of ownership of the mental health establishment shall be intimated to the Authority by the new owner within one month from the date of change of ownership.

(5) In the event of change of category of the mental health establishment, such establishment shall surrender the certificate of registration to the Authority and the mental health establishment shall apply afresh for grant of certificate of registration in that category.

Maintenance of register of mental health establishment in digital format.

71. The Authority shall maintain in digital format a register of mental health establishments, registered by the Authority, to be called the Register of Mental Health Establishments and shall enter the particulars of the certificate of registration so granted in a separate register to be maintained in such form and manner as may be prescribed.

Duty of mental health establishment to display information.

72. (1) Every mental health establishment shall display within the establishment at conspicuous place (including on its website), the contact details including address and telephone numbers of the concerned Board.

(2) Every mental health establishment shall provide the person with necessary forms to apply to the concerned Board and also give free access to make telephone calls to the Board to apply for a review of the admission.

CHAPTER XI

MENTAL HEALTH REVIEW BOARDS

73. (1) The State Authority shall, by notification, constitute Boards to be called the Mental Health Review Boards, for the purposes of this Act.

Constitution
of Mental
Health Review
Boards.

(2) The requisite number, location and the jurisdiction of the Boards shall be specified by the State Authority in consultation with the State Governments concerned.

(3) The constitution of the Boards by the State Authority for a district or group of districts in a State under this section shall be such as may be prescribed by the Central Government.

(4) While making rules under sub-section (3), the Central Government shall have regard to the following, namely:—

(a) the expected or actual workload of the Board in the State in which such Board is to be constituted;

(b) number of mental health establishments existing in the State;

(c) the number of persons with mental illness;

(d) population in the district in which the Board is to be constituted;

(e) geographical and climatic conditions of the district in which the Board is to be constituted.

74. (1) Each Board shall consist of—

Composition
of Board.

(a) a District Judge, or an officer of the State judicial services who is qualified to be appointed as District Judge or a retired District Judge who shall be chairperson of the Board;

(b) representative of the District Collector or District Magistrate or Deputy Commissioner of the districts in which the Board is to be constituted;

(c) two members of whom one shall be a psychiatrist and the other shall be a medical practitioner.

(d) two members who shall be persons with mental illness or care-givers or persons representing organisations of persons with mental illness or care-givers or non-governmental organisations working in the field of mental health.

(2) A person shall be disqualified to be appointed as the chairperson or a member of a Board or be removed by the State Authority, if he—

(a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(b) is adjudged as an insolvent; or

(c) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(d) has such financial or other interest as is likely to prejudice the discharge of his functions as a member; or

(e) has such other disqualifications as may be prescribed by the Central Government.

(3) A chairperson or member of a Board may resign his office by notice in writing under his hand addressed to the Chairperson of the State Authority and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to the category under sub-section (1) of section 74.

Terms and conditions of service of chairperson and members of Board.

75. (1) The chairperson and members of the Board shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall be eligible for reappointment for another term of five years or up to the age of seventy years whichever is earlier.

(2) The appointment of chairperson and members of every Board shall be made by the Chairperson of the State Authority.

(3) The honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board shall be such as may be prescribed by the Central Government.

Decisions of Authority and Board.

76. (1) The decisions of the Authority or the Board, as the case may be, shall be by consensus, failing which by a majority of votes of members present and voting and in the event of equality of votes, the president or the chairperson, as the case may be, shall have a second or casting vote.

(2) The quorum of a meeting of the Authority or the Board, as the case may be, shall be three members.

Applications to Board.

77. (1) Any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation, with the consent of such a person, being aggrieved by the decision of any of the mental health establishment or whose rights under this Act have been violated, may make an application to the Board seeking redressal or appropriate relief.

(2) There shall be no fee or charge levied for making such an application.

(3) Every application referred to in sub-section (1) shall contain the name of applicant, his contact details, the details of the violation of his rights, the mental health establishment or any other place where such violation took place and the redressal sought from the Board.

(4) In exceptional circumstances, the Board may accept an application made orally or over telephone from a person admitted to a mental health establishment.

Proceedings before Board to be judicial proceedings.

78. All proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

45 of 1860.

Meetings.

79. The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations made by the Central Authority.

Proceedings before Board.

80. (1) The Board, on receipt of an application under sub-section (1) of section 85, shall, subject to the provisions of this section, endeavour to hear and dispose of the same within a period of ninety days.

(2) The Board shall dispose of an application—

(a) for appointment of nominated representative under clause (d) of sub-section (4) of section 14;

(b) challenging admission of a minor under section 87;

(c) challenging supported admission under sub-section (10) or sub-section (11) of section 89,

within a period of seven days from the date of receipt of such applications.

(3) The Board shall dispose of an application challenging supported admission under section 90 within a period of twenty-one days from the date of receipt of the application.

(4) The Board shall dispose of an application, other than an application referred to in sub-section (3), within a period of ninety days from the date of filing of the application.

(5) The proceeding of the Board shall be held *in camera*.

(6) The Board shall not ordinarily grant an adjournment for the hearing.

(7) The parties to an application may appear in person or be represented by a counsel or a representative of their choice.

(8) In respect of any application concerning a person with mental illness, the Board shall hold the hearings and conduct the proceedings at the mental health establishment where such person is admitted.

(9) The Board may allow any persons other than those directly interested with the application, with the permission of the person with mental illness and the chairperson of the Board, to attend the hearing.

(10) The person with mental illness whose matter is being heard shall have the right to give oral evidence to the Board, if such person desires to do so.

(11) The Board shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate.

(12) The parties to a matter shall have the right to inspect any document relied upon by any other party in its submissions to the Board and may obtain copies of the same.

(13) The Board shall, within five days of the completion of the hearing, communicate its decision to the parties in writing.

(14) Any member who is directly or indirectly involved in a particular case, shall not sit on the Board during the hearings with respect to that case.

81. (1) The Central Authority shall appoint an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing, when necessary or the capacity of persons to make mental health care or treatment decisions.

Central Authority to appoint Expert Committee to prepare guidance document.

(2) Every medical practitioner and mental health professional shall, while assessing capacity of a person to make mental healthcare or treatment decisions, comply with the guidance document referred to in sub-section (1) and follow the procedure specified therein.

82. (1) Subject to the provisions of this Act, the powers and functions of the Board shall, include all or any of the following matters, namely:—

Powers and functions of Board.

(a) to register, review, alter, modify or cancel an advance directive;

(b) to appoint a nominated representative;

(c) to receive and decide application from a person with mental illness or his nominated representative or any other interested person against the decision of medical officer or mental health professional in charge of mental health establishment or mental health establishment under section 87 or section 89 or section 90;

(d) to receive and decide applications in respect non-disclosure of information specified under sub-section (3) of section 25;

(e) to adjudicate complaints regarding deficiencies in care and services specified under section 28;

(f) to visit and inspect prison or jails and seek clarifications from the medical officer in-charge of health services in such prison or jail.

(2) Where it is brought to the notice of a Board or the Central Authority or State Authority, that a mental health establishment violates the rights of persons with mental illness, the Board or the Authority may conduct an inspection and inquiry and take action to protect their rights.

(3) Notwithstanding anything contained in this Act, the Board, in consultation with the Authority, may take measures to protect the rights of persons with mental illness as it considers appropriate.

(4) If the mental health establishment does not comply with the orders or directions of the Authority or the Board or wilfully neglects such order or direction, the Authority or the Board, as the case may be, may impose penalty which may extend up to five lakh rupees on such mental health establishment and the Authority on its own or on the recommendations of the Board may also cancel the registration of such mental health establishment after giving an opportunity of being heard.

Appeal to
High Court
against order
of Authority
or Board.

83. Any person or establishment aggrieved by the decision of the Authority or a Board may, within a period of thirty days from such decision, prefer an appeal to the High Court of the State in which the Board is situated:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Grants by
Central
Government.

84. (1) The Central Government may, make to the Central Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The grants referred to in sub-section (1) shall be applied for,—

(a) meeting the salary, allowances and other remuneration of the chairperson, members, officers and other employees of the Central Authority;

(b) meeting the salary, allowances and other remuneration of the chairperson, members, officers and other employees of the Boards; and

(c) the expenses of the Central Authority and the Boards incurred in the discharge of their functions and for the purposes of this Act.

CHAPTER XII

ADMISSION, TREATMENT AND DISCHARGE

Admission
of person
with
mental
illness
as independent
patient
in
mental health
establishment.

Admission of
person with
mental illness
as independent
patient in
mental health
establishment.

85. (1) For the purposes of this Act, “independent patient or an independent admission” refers to the admission of person with mental illness, to a mental health establishment, who has the capacity to make mental healthcare and treatment decisions or requires minimal support in making decisions.

(2) All admissions in the mental health establishment shall, as far as possible, be independent admissions except when such conditions exist as make supported admission unavoidable.

Independent
admission and
treatment.

86. (1) Any person, who is not a minor and who considers himself to have a mental illness and desires to be admitted to any mental health establishment for treatment may request the medical officer or mental health professional in charge of the establishment to be admitted as an independent patient.

(2) On receipt of such request under sub-section (1), the medical officer or mental health professional in charge of the establishment shall admit the person to the establishment if the medical officer or mental health professional is satisfied that—

(a) the person has a mental illness of a severity requiring admission to a mental health establishment;

(b) the person with mental illness is likely to benefit from admission and treatment to the mental health establishment;

(c) the person has understood the nature and purpose of admission to the mental health establishment, and has made the request for admission of his own free will, without any duress or undue influence and has the capacity to make mental healthcare and treatment decisions without support or requires minimal support from others in making such decisions.

(3) If a person is unable to understand the purpose, nature, likely effects of proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support approaching hundred per cent. support in making decisions, he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted as independent patient under this section.

(4) A person admitted as an independent patient to a mental health establishment shall be bound to abide by order and instructions or bye-laws of the mental health establishment.

(5) An independent patient shall not be given treatment without his informed consent.

(6) The mental health establishment shall admit an independent patient on his own request, and shall not require the consent or presence of a nominated representative or a relative or care-giver for admitting the person to the mental health establishment.

(7) Subject to the provisions contained in section 88 an independent patient may get himself discharged from the mental health establishment without the consent of the medical officer or mental health professional in charge of such establishment.

87. (1) A minor may be admitted to a mental health establishment only after following the procedure laid down in this section.

Admission of minor.

(2) The nominated representative of the minor shall apply to the medical officer in charge of a mental health establishment for admission of the minor to the establishment.

(3) Upon receipt of such an application, the medical officer or mental health professional in charge of the mental health establishment may admit such a minor to the establishment, if two psychiatrists, or one psychiatrist and one mental health professional or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding seven days and both independently conclude based on the examination and, if appropriate, on information provided by others, that,—

(a) the minor has a mental illness of a severity requiring admission to a mental health establishment;

(b) admission shall be in the best interests of the minor, with regard to his health, well-being or safety, taking into account the wishes of the minor if ascertainable and the reasons for reaching this decision;

(c) the mental healthcare needs of the minor cannot be fulfilled unless he is admitted; and

(d) all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor.

(4) A minor so admitted shall be accommodated separately from adults, in an environment that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments.

(5) The nominated representative or an attendant appointed by the nominated representative shall under all circumstances stay with the minor in the mental health establishment for the entire duration of the admission of the minor to the mental health establishment.

(6) In the case of minor girls, where the nominated representative is male, a female attendant shall be appointed by the nominated representative and under all circumstances shall stay with the minor girl in the mental health establishment for the entire duration of her admission.

(7) A minor shall be given treatment with the informed consent of his nominated representative.

(8) If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health establishment, the minor shall be discharged by the mental health establishment.

(9) Any admission of a minor to a mental health establishment shall be informed by the medical officer or mental health professional in charge of the mental health establishment to the concerned Board within a period of seventy-two hours.

(10) The concerned Board shall have the right to visit and interview the minor or review the medical records if the Board desires to do so.

(11) Any admission of a minor which continues for a period of thirty days shall be immediately informed to the concerned Board.

(12) The concerned Board shall carry out a mandatory review within a period of seven days of being informed, of all admissions of minors continuing beyond thirty days and every subsequent thirty days.

(13) The concerned Board shall at minimum, review the clinical records of the minor and may interview the minor if necessary.

Discharge of independent patients.

88. (1) The medical officer or mental health professional in charge of a mental health establishment shall discharge from the mental health establishment any person admitted under section 86 as an independent patient immediately on request made by such person or if the person disagrees with his admission under section 86 subject to the provisions of sub-section (3).

(2) Where a minor has been admitted to a mental health establishment under section 87 and attains the age of eighteen years during his stay in the mental health establishment, the medical officer in charge of the mental health establishment shall classify him as an independent patient under section 86 and all provisions of this Act as applicable to independent patient who is not minor, shall apply to such person.

(3) Notwithstanding anything contained in this Act, a mental health professional may prevent discharge of a person admitted as an independent person under section 86 for a period of twenty-four hours so as to allow his assessment necessary for admission under section 89 if the mental health professional is of the opinion that—

(a) such person is unable to understand the nature and purpose of his decisions and requires substantial or very high support from his nominated representative; or

(b) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or

(c) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(d) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself.

(4) The person referred to in sub-section (3) shall be either admitted as a supported patient under section 89, or discharged from the establishment within a period of twenty-four hours or on completion of assessments for admission for a supported patient under section 89, whichever is earlier.

Admission and treatment of persons with mental illness, with high support needs, in mental health establishment, up to thirty days (supported admission).

89. (1) The medical officer or mental health professional in charge of a mental health establishment shall admit every such person to the establishment, upon application by the nominated representative of the person, under this section, if—

(a) the person has been independently examined on the day of admission or in the preceding seven days, by one psychiatrist and the other being a mental health professional or a medical practitioner, and both independently conclude based on the examination and, if appropriate, on information provided by others, that the person has a mental illness of such severity that the person,—

(i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(iii) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself;

(b) the psychiatrist or the mental health professionals or the medical practitioner, as the case may be, certify, after taking into account an advance directive, if any, that admission to the mental health establishment is the least restrictive care option possible in the circumstances; and

(c) the person is ineligible to receive care and treatment as an independent patient because the person is unable to make mental healthcare and treatment decisions independently and needs very high support from his nominated representative in making decisions.

(2) The admission of a person with mental illness to a mental health establishment under this section shall be limited to a period of thirty days.

(3) At the end of the period mentioned under sub-section (2), or earlier, if the person no longer meets the criteria for admission as stated in sub-section (1), the patient shall no longer remain in the establishment under this section.

(4) On the expiry of the period of thirty days referred to in sub-section (2), the person may continue to remain admitted in the mental health establishment in accordance with the provisions of section 90.

(5) If the conditions under section 90 are not met, the person may continue to remain in the mental health establishment as an independent patient under section 86 and the medical officer or mental health professional in charge of the mental health establishment shall inform the person of his admission status under this Act, including his right to leave the mental health establishment.

(6) Every person with mental illness admitted under this section shall be provided treatment after taking into account,—

(a) an advance directive if any; or

(b) informed consent of the patient with the support of his nominated representative subject to the provisions of sub-section (7).

(7) If a person with the mental illness admitted under this section requires nearly hundred per cent. support from his nominated representative in making a decision in respect of his treatment, the nominated representative may temporarily consent to the treatment plan of such person on his behalf.

(8) In case where consent has been given under sub-section (7), the medical officer or mental health professional in charge of the mental health establishment shall record such consent in the medical records and review the capacity of the patient to give consent every seven days.

(9) The medical officer or mental health professional in charge of the mental health establishment shall report the concerned Board,—

(a) within three days the admissions of a woman or a minor;

(b) within seven days the admission of any person not being a woman or minor.

(10) A person admitted under this section or his nominated representative or a representative of a registered non-governmental organisation with the consent of the person, may apply to the concerned Board for review of the decision of the medical officer or mental health professional in charge of the mental health establishment to admit the person to the mental health establishment under this section.

(11) The concerned Board shall review the decision of the medical officer or mental health professional in charge of the mental health establishment and give its findings thereon within seven days of receipt of request for such review which shall be binding on all the concerned parties.

(12) Notwithstanding anything contained in this Act, it shall be the duty of the medical officer or mental health professional in charge of the mental health establishment to keep the condition of the person with mental illness admitted under this section on going review.

(13) If the medical officer or mental health professional in charge of the mental health establishment is of the opinion that the conditions specified under sub-section (1) are no longer applicable, he shall terminate the admission under this section, and inform the person and his nominated representative accordingly.

(14) Non applicability of conditions referred to in sub-section (13) shall not preclude the person with mental illness remaining as an independent patient.

(15) In a case, a person with the mental illness admitted under this section has been discharged, such person shall not be readmitted under this section within a period of seven days from the date of his discharge.

(16) In case a person referred to in sub-section (15) requires readmission within a period of seven days referred to in that sub-section, such person shall be considered for readmission in accordance with the provisions of section 90.

(17) If the medical officer or mental health professional in charge of the mental health establishment is of the opinion that the person with mental illness admitted under this section in the mental health establishment requires or is likely to require further treatment beyond the period of thirty days, then such medical officer or mental health professional shall be duty bound to refer the matter to be examined by two psychiatrists for his admission beyond thirty days.

Admission and treatment of persons with mental illness, with high support needs, in mental health establishment, beyond thirty days (supported admission beyond thirty days).

90. (1) If a person with mental illness admitted under section 89 requires continuous admission and treatment beyond thirty days or a person with mental illness discharged under sub-section (15) of that section requires readmission within seven days of such discharge, he shall be admitted in accordance with the provisions of this section.

(2) The medical officer or mental health professional in charge of a mental health establishment, upon application by the nominated representative of a person with mental illness, shall continue admission of such person with mental illness, if—

(a) two psychiatrists have independently examined the person with mental illness in the preceding seven days and both independently conclude based on the examination and, on information provided by others that the person has a mental illness of a severity that the person—

(i) has consistently over time threatened or attempted to cause bodily harm to himself; or

(ii) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him; or

(iii) has consistently over time shown an inability to care for himself to a degree that places the individual at risk of harm to himself;

(b) both psychiatrists, after taking into account an advance directive, if any, certify that admission to a mental health establishment is the least restrictive care option possible under the circumstances; and

(c) the person continues to remain ineligible to receive care and treatment as a independent patient as the person cannot make mental healthcare and treatment decisions independently and needs very high support from his nominated representative, in making decisions.

(3) The medical officer or mental health professional in charge of the mental health establishment shall report all admissions or readmission under this section, within a period of seven days of such admission or readmission, to the concerned Board.

(4) The Board shall, within a period of twenty-one days from the date of last admission or readmission of person with mental illness under this section, permit such admission or readmission or order discharge of such person.

(5) While permitting admission or readmission or ordering discharge of such person under sub-section (4), the Board shall examine—

(a) the need for institutional care to such person;

(b) whether such care cannot be provided in less restrictive settings based in the community.

(6) In all cases of application for readmission or continuance of admission of a person with mental illness in the mental health establishment under this section, the Board may require the medical officer or psychiatrist in charge of treatment of such person with mental illness to submit a plan for community based treatment and the progress made, or likely to be made, towards realising this plan.

(7) The person referred to in sub-section (4) shall not be permitted to continue in the mental health establishment in which he had been admitted or his readmission in such establishment merely on the ground of non-existence of community based services at the place where such person ordinarily resides.

(8) The admission of a person with mental illness to a mental health establishment under this section shall be limited to a period up to ninety days in the first instance.

(9) The admission of a person with mental illness to a mental health establishment under this section beyond the period of ninety days may be extended for a period of one hundred and twenty days at the first instance and thereafter for a period of one hundred and eighty days each time after complying with the provisions of sub-sections (1) to (7).

(10) If the Board refuses to permit admission or continuation thereof or readmission under sub-section (9), or on the expiry of the periods referred to in sub-section (9) or earlier if such person no longer falls within the criteria for admission under sub-section (1), such person shall be discharged from such mental health establishment.

(11) Every person with mental illness admitted under this section shall be provided treatment, after taking into account—

(a) an advance directive; or

(b) informed consent of the person with the support from his nominated representative subject to the provision of sub-section (12).

(12) If a person with mental illness admitted under this section, requires nearly hundred per cent. support from his nominated representative, in making decision in respect of his treatment, the nominated representative may temporarily consent to the treatment plan of such person on his behalf.

(13) In a case where consent has been given under sub-section (12), the medical officer or mental health professional in charge of the mental health establishment shall record such consent in the medical records of such person with mental illness and review on the expiry of every fortnight, the capacity of such person to give consent.

(14) A person with mental illness admitted under this section, or his nominated representative or a representative of a registered non-governmental organisation with the consent of the person, may apply to the concerned Board for review of the decision of the medical officer or mental health professional in charge of medical health establishment to

admit such person in such establishment and the decision of the Board thereon shall be binding on all parties.

(15) Notwithstanding anything contained in this Act, if the medical officer or mental health professional in charge of the mental health establishment is of the opinion that the conditions under sub-section (1) are no longer applicable, such medical officer or mental health professional shall discharge such person from such establishment and inform such person and his nominated representative accordingly.

(16) The person with mental illness referred to in sub-section (15) may continue to remain in the mental health establishment as an independent patient.

Leave of
absence.

91. The medical officer or mental health professional in charge of the mental health establishment may grant leave to any person with mental illness admitted under section 87 or section 89 or section 90, to be absent from the establishment subject to such conditions, if any, and for such duration as such medical officer or psychiatrist may consider necessary.

Absence with-
out leave or
discharge.

92. If any person to whom section 103 applies absents himself without leave or without discharge from the mental health establishment, he shall be taken into protection by any Police Officer at the request of the medical officer or mental health professional in-charge of the mental health establishment and shall be sent back to the mental health establishment immediately.

Transfer of
persons with
mental
illness from
one mental
health
establish-
ment to
another
mental
health
establish-
ment.

93. (1) A person with mental illness admitted to a mental health establishment under section 87 or section 89 or section 90 or section 103, as the case may be, may subject to any general or special order of the Board be removed from such mental health establishment and admitted to another mental health establishment within the State or with the consent of the Central Authority to any mental health establishment in any other State:

Provided that no person with mental illness admitted to a mental health establishment under an order made in pursuance of an application made under this Act shall be so removed unless intimation and reasons for the transfer have been given to the person with mental illness and his nominated representative.

(2) The State Government may make such general or special order as it thinks fit directing the removal of any prisoner with mental illness from the place where he is for the time being detained, to any mental health establishment or other place of safe custody in the State or to any mental health establishment or other place of safe custody in any other State with the consent of the Government of that other State.

Emergency
treatment.

94. (1) Notwithstanding anything contained in this Act, any medical treatment, including treatment for mental illness, may be provided by any registered medical practitioner to a person with mental illness either at a health establishment or in the community, subject to the informed consent of the nominated representative, where the nominated representative is available, and where it is immediately necessary to prevent—

(a) death or irreversible harm to the health of the person; or

(b) the person inflicting serious harm to himself or to others; or

(c) the person causing serious damage to property belonging to himself or to others where such behaviour is believed to flow directly from the person's mental illness.

Explanation.—For the purposes of this section, “emergency treatment” includes transportation of the person with mental illness to a nearest mental health establishment for assessment.

(2) Nothing in this section shall allow any medical officer or psychiatrist to give to the person with mental illness medical treatment which is not directly related to the emergency treatment specified under sub-section (1).

(3) Nothing in this section shall allow any medical officer or psychiatrist to use electro-convulsive therapy as a form of treatment.

(4) The emergency treatment referred to in this section shall be limited to seventy-two hours or till the person with mental illness has been assessed at a mental health establishment, whichever is earlier:

Provided that during a disaster or emergency declared by the appropriate Government, the period of emergency treatment referred to in this sub-section may extend up to seven days.

95. (1) Notwithstanding anything contained in this Act, the following treatments shall not be performed on any person with mental illness—

Prohibited procedures.

(a) electro-convulsive therapy without the use of muscle relaxants and anaesthesia;

(b) electro-convulsive therapy for minors;

(c) sterilisation of men or women, when such sterilisation is intended as a treatment for mental illness;

(d) chained in any manner or form whatsoever.

(2) Notwithstanding anything contained in sub-section (1), if, in the opinion of psychiatrist in charge of a minor's treatment, electro-convulsive therapy is required, then, such treatment shall be done with the informed consent of the guardian and prior permission of the concerned Board.

96. (1) Notwithstanding anything contained in this Act, psychosurgery shall not be performed as a treatment for mental illness unless—

Restriction on psychosurgery for persons with mental illness.

(a) the informed consent of the person on whom the surgery is being performed; and

(b) approval from the concerned Board to perform the surgery,

has been obtained.

(2) The Central Authority may make regulations for the purpose of carrying out the provisions of this section.

97. (1) A person with mental illness shall not be subjected to seclusion or solitary confinement, and, where necessary, physical restraint may only be used when,—

Restraints and seclusion.

(a) it is the only means available to prevent imminent and immediate harm to person concerned or to others;

(b) it is authorised by the psychiatrist in charge of the person's treatment at the mental health establishment.

(2) Physical restraint shall not be used for a period longer than it is absolutely necessary to prevent the immediate risk of significant harm.

(3) The medical officer or mental health professional in charge of the mental health establishment shall be responsible for ensuring that the method, nature of restraint justification for its imposition and the duration of the restraint are immediately recorded in the person's medical notes.

(4) The restraint shall not be used as a form of punishment or deterrent in any circumstance and the mental health establishment shall not use restraint merely on the ground of shortage of staff in such establishment.

(5) The nominated representative of the person with mental illness shall be informed about every instance of restraint within a period of twenty-four hours.

(6) A person who is placed under restraint shall be kept in a place where he can cause no harm to himself or others and under regular ongoing supervision of the medical personnel at the mental health establishment.

(7) The mental health establishment shall include all instances of restraint in the report to be sent to the concerned Board on a monthly basis.

(8) The Central Authority may make regulations for the purpose of carrying out the provisions of this section.

(9) The Board may order a mental health establishment to desist from applying restraint if the Board is of the opinion that the mental health establishment is persistently and wilfully ignoring the provisions of this section.

Discharge planning.

98. (1) Whenever a person undergoing treatment for mental illness in a mental health establishment is to be discharged into the community or to a different mental health establishment or where a new psychiatrist is to take responsibility of the person's care and treatment, the psychiatrist who has been responsible for the person's care and treatment shall consult with the person with mental illness, the nominated representative, the family member or care-giver with whom the person with mental illness shall reside on discharge from the hospital, the psychiatrist expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or services would be appropriate for the person.

(2) The psychiatrist responsible for the person's care shall in consultation with the persons referred to in sub-section (1) ensure that a plan is developed as to how treatment or services shall be provided to the person with mental illness.

(3) The discharge planning under this section shall apply to all discharges from a mental health establishment.

Research.

99. (1) The professionals conducting research shall obtain free and informed consent from all persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medicinal interventions.

(2) In case of research involving any psychological, physical, chemical or medicinal interventions to be conducted on person who is unable to give free and informed consent but does not resist participation in such research, permission to conduct such research shall be obtained from concerned State Authority.

(3) The State Authority may allow the research to proceed based on informed consent being obtained from the nominated representative of persons with mental illness, if the State Authority is satisfied that—

(a) the proposed research cannot be performed on persons who are capable of giving free and informed consent;

(b) the proposed research is necessary to promote the mental health of the population represented by the person;

(c) the purpose of the proposed research is to obtain knowledge relevant to the particular mental health needs of persons with mental illness;

(d) a full disclosure of the interests of persons and organisations conducting the proposed research is made and there is no conflict of interest involved; and

(e) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and ethical approval has been obtained from the institutional ethics committee where such research is to be conducted.

(4) The provisions of this section shall not restrict research based study of the case notes of a person who is unable to give informed consent, so long as the anonymity of the persons is secured.

(5) The person with mental illness or the nominated representative who gives informed consent for participation in any research under this Act may withdraw the consent at any time during the period of research.

CHAPTER XIII

RESPONSIBILITIES OF OTHER AGENCIES

100. (1) Every officer in-charge of a police station shall have a duty—

(a) to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself; or

(b) to take under protection any person within the limits of the police station whom the officer has reason to believe to be a risk to himself or others by reason of mental illness.

(2) The officer in-charge of a police station shall inform the person who has been taken into protection under sub-section (1), the grounds for taking him into such protection or his nominated representative, if in the opinion of the officer such person has difficulty in understanding those grounds.

(3) Every person taken into protection under sub-section (1) shall be taken to the nearest public health establishment as soon as possible but not later than twenty-four hours from the time of being taken into protection, for assessment of the person's healthcare needs.

(4) No person taken into protection under sub-section (1) shall be detained in the police lock up or prison in any circumstances.

(5) The medical officer in-charge of the public health establishment shall be responsible for arranging the assessment of the person and the needs of the person with mental illness will be addressed as per other provisions of this Act as applicable in the particular circumstances.

(6) The medical officer or mental health professional in-charge of the public mental health establishment if on assessment of the person finds that such person does not have a mental illness of a nature or degree requiring admission to the mental health establishment, he shall inform his assessment to the police officer who had taken the person into protection and the police officer shall take the person to the person's residence or in case of homeless persons, to a Government establishment for homeless persons.

(7) In case of a person with mental illness who is homeless or found wandering in the community, a First Information Report of a missing person shall be lodged at the concerned police station and the station house officer shall have a duty to trace the family of such person and inform the family about the whereabouts of the person.

101. (1) Every officer in-charge of a police station, who has reason to believe that any person residing within the limits of the police station has a mental illness and is being ill-treated or neglected, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.

Duties of police officers in respect of persons with mental illness.

Report to Magistrate of person with mental illness in private residence who is ill-treated or neglected.

(2) Any person who has reason to believe that a person has mental illness and is being ill-treated or neglected by any person having responsibility for care of such person, shall report the fact to the police officer in-charge of the police station within whose jurisdiction the person with mental illness resides.

(3) If the Magistrate has reason to believe based on the report of a police officer or otherwise, that any person with mental illness within the local limits of his jurisdiction is being ill-treated or neglected, the Magistrate may cause the person with mental illness to be produced before him and pass an order in accordance with the provisions of section 102.

Conveying or
admitting
person with
mental illness
to mental
health
establishment
by Magistrate.

102. (1) When any person with mental illness or who may have a mental illness appears or is brought before a Magistrate, the Magistrate may, order in writing—

(a) that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary and the mental health establishment shall deal with such person in accordance with the provisions of the Act; or

(b) to authorise the admission of the person with mental illness in a mental health establishment for such period not exceeding ten days to enable the medical officer or mental health professional in charge of the mental health establishment to carry out an assessment of the person and to plan for necessary treatment, if any.

(2) On completion of the period of assessment referred to in sub-section (1), the medical officer or mental health professional in charge of the mental health establishment shall submit a report to the Magistrate and the person shall be dealt with in accordance with the provisions of this Act.

Prisoners with
mental illness.

103. (1) An order under section 30 of the Prisoners Act, 1900 or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein:

3 of 1900.
45 of 1950.
46 of 1950.
62 of 1957.
2 of 1974.

Provided that transfer of a prisoner with mental illness to the psychiatric ward in the medical wing of the prison shall be sufficient to meet the requirements under this section:

Provided further that where there is no provision for a psychiatric ward in the medical wing, the prisoner may be transferred to a mental health establishment with prior permission of the Board.

(2) The method, modalities and procedure by which the transfer of a prisoner under this section is to be effected shall be such as may be prescribed.

(3) The medical officer of a prison or jail shall send a quarterly report to the concerned Board certifying therein that there are no prisoners with mental illness in the prison or jail.

(4) The Board may visit the prison or jail and ask the medical officer as to why the prisoner with mental illness, if any, has been kept in the prison or jail and not transferred for treatment to a mental health establishment.

(5) The medical officer in-charge of a mental health establishment wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

(6) The appropriate Government shall setup mental health establishment in the medical wing of at least one prison in each State and Union territory and prisoners with mental illness may ordinarily be referred to and cared for in the said mental health establishment.

(7) The mental health establishment setup under sub-section (5) shall be registered under this Act with the Central or State Mental Health Authority, as the case may be, and shall conform to such standards and procedures as may be prescribed.

104. (1) If it appears to the person in-charge of a State run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.

Persons in custodial institutions.

(2) The medical officer in-charge of a mental health establishment shall be responsible for assessment of the person with mental illness, and the treatment required by such persons shall be decided in accordance with the provisions of this Act.

105. If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.

Question of mental illness in judicial process.

CHAPTER XIV

RESTRICTION TO DISCHARGE FUNCTIONS BY PROFESSIONALS NOT COVERED BY PROFESSION

106. No mental health professional or medical practitioner shall discharge any duty or perform any function not authorised by this Act or specify or recommend any medicine or treatment not authorised by the field of his profession.

Restriction to discharge functions by professionals not covered by profession.

CHAPTER XV

OFFENCES AND PENALTIES

107. (1) Whoever carries on a mental health establishment without registration shall be liable to a penalty which shall not be less than five thousand rupees but which may extend to fifty thousand rupees for first contravention or a penalty which shall not be less than fifty thousand rupees but which may extend to two lakh rupees for a second contravention or a penalty which shall not be less than two lakh rupees but which may extend to five lakh rupees for every subsequent contravention.

Penalties for establishing or maintaining mental health establishment in contravention of provisions of this Act.

(2) Whoever knowingly serves in the capacity as a mental health professional in a mental health establishment which is not registered under this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

(3) Save as otherwise provided in this Act, the penalty under this section shall be adjudicated by the State Authority.

(4) Whoever fails to pay the amount of penalty, the State Authority may forward the order to the Collector of the district in which such person owns any property or resides or carries on his business or profession or where the mental health establishment is situated, and the Collector shall recover from such persons or mental health establishment the amount specified thereunder, as if it were an arrear of land revenue.

(5) All sums realised by way of penalties under this Chapter shall be credited to the Consolidated Fund of India.

108. Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall for first contravention be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Punishment for contravention of provisions of the Act or rules or regulations made thereunder.

Offences by
companies.

109. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XVI

MISCELLANEOUS

Power to call
for informa-
tion.

110. (1) The Central Government may, by a general or special order, call upon the Authority or the Board to furnish, periodically or as and when required any information concerning the activities carried on by the Authority or the Board, as the case may be, in such form as may be prescribed, to enable that Government, to carry out the purposes of this Act.

(2) The State Government may, by a general or special order, call upon the State Authority or the Board to furnish, periodically or as and when required any information concerning the activities carried on by the State Authority or the Board in such form as may be prescribed, to enable that Government, to carry out the purposes of this Act.

Power of
Central
Government
to issue
directions.

111. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of
Central
Government
to supersede
Central
Authority.

112. (1) If at any time the Central Government is of the opinion—

(a) that on account of circumstances beyond the control of the Central Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Central Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Central Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Central Authority to make representations against the proposed supersession and shall consider representations, if any, of the Central Authority.

(2) Upon the publication of a notification under sub-section (1), superseding the Central Authority,—

(a) the chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;

(c) all properties owned or controlled by the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Central Authority by a fresh appointment of its chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

113. (1) If at any time the State Government is of the opinion—

(a) that on account of circumstances beyond the control of the State Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the State Authority has persistently defaulted in complying with any direction given by the State Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do,

Power of
State
Government
to supersede
State
Authority.

the State Government may, by notification and for reasons to be specified therein, supersede the State Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the State Government shall give a reasonable opportunity to the State Authority to make representations against the proposed supersession and shall consider representations, if any, of the State Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the State Authority,—

(a) the chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the State Authority shall, until the State Authority is reconstituted under sub-section (3), be exercised and discharged by the State Government or such authority as the State Government may specify in this behalf;

(c) all properties owned or controlled by the State Authority shall, until the State Authority is reconstituted under sub-section (3), vest in the State Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government shall reconstitute the State Authority by a fresh appointment of its chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The State Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature at the earliest.

Special provisions for States in north-east and hill States.

114. (1) Notwithstanding anything contained in this Act, the provisions of this Act shall, taking into consideration the communication, travel and transportation difficulties, apply to the States of Assam, Meghalaya, Tripura, Mizoram, Manipur, Nagaland, Arunachal Pradesh and Sikkim, with following modifications, namely:—

(a) under sub-section (3) of section 73, the chairperson of the Central Authority may constitute one or more Boards for all the States;

(b) in sub-section (2) of section 80, reference to the period of “seven days”, and in sub-section (3) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days”, respectively;

(c) in sub-section (9) of section 87, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”, and in sub-sections (3) and (12) of that section, reference to a period of “seven days” shall be construed as “ten days”;

(d) in sub-section (3) of section 88, reference to the period of “twenty-four hours” shall be construed as “seventy-two hours”;

(e) in clauses (a) and (b) of sub-section (9) of section 89, reference to the period of “three days” and “seven days” shall be construed as “seven days” and “ten days” respectively;

(f) in sub-section (3) of section 90, reference to the period of “seven days” and in sub-section (4) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days” respectively;

(g) in sub-section (4) of section 94, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”.

(2) The provisions of clauses (b) to (g) of sub-section (1) shall also apply to the States of Uttarakhand, Himachal Pradesh and Jammu and Kashmir and the Union territories of Lakshadweep and Andaman and Nicobar Islands.

(3) The provisions of this section shall cease to have effect on the expiry of a period of ten years from the commencement of this Act, except as respects things done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897, shall apply as if this Act had then been repealed by a Central Act.

10 of 1897.

Presumption of severe stress in case of attempt to commit suicide.

115. (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

45 of 1860.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

116. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Board is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction.

14 of 1987. **117.** The Central Government may, if it considers so necessary in the interest of persons with mental illness being governed by the Mental Health Act, 1987, take appropriate interim measures by making necessary transitory schemes.

Transitory provisions.

45 of 1860. **118.** The chairperson, and other members and the officers and other employees of the Authority and Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Chairperson, members and staff of Authority and Board to be public servants.

119. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or against the chairperson or any other member of the Authority or the Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder in the discharge of official duties.

Protection of action taken in good faith.

120. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

121. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of Central Government and State Governments to make rules.

(2) Subject to the provisions of sub-section (1), the State Government may, with the previous approval of the Central Government, by notification, make rules for carrying out the provisions of this Act:

Provided that the first rules shall be made by the Central Government, by notification.

(3) In particular, and without prejudice to the generality of the foregoing power, rules made under sub-section (1) may provide for all or any of the following matters, namely:—

(a) qualifications relating to clinical psychologist under sub-clause (ii) of clause (f) of sub-section (1) of section 2;

(b) qualifications relating to psychiatric social worker under clause (w) of sub-section (1) of section 2;

(c) the manner of nomination of members of the Central Authority under sub-section (2) of section 34;

(d) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the Central Authority under sub-section (3) of section 35;

(e) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 43;

(f) the manner of nomination of members of the State Authority under sub-section (2) of section 46;

(g) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the State Authority under sub-section (3) of section 47;

(h) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 55;

(i) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 59;

(j) the form in, and the time within which, an annual report shall be prepared under section 60;

(k) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 63;

(l) the form in, and the time within which, an annual report shall be prepared under section 64;

(m) manner of constitution of the Board by the State Authority for a district or groups of districts in a State;

(n) other disqualifications of chairperson or members of the Board under clause (e) of sub-section (2) of section 82;

(o) any other matter which is required to be, or may be, specified by rules or in respect for which provision is to be made by rules.

(4) In particular, and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may provide for all or any of the following matters, namely:—

(a) the manner of proof of mental healthcare and treatment under sub-section (1) of section 4;

(b) provision of half-way homes, sheltered accommodation and supported accommodation under clause (b) of sub-section (4) of section 18;

(c) hospitals and community based rehabilitation establishment and services under clause (d) of sub-section (4) of section 18;

(d) basic medical records of which access is to be given to a person with mental illness under sub-section (1) of section 25;

(e) custodial institutions under sub-section (2) of section 27;

(f) the form of application to be submitted by the mental health establishment with the undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority, under the *Explanation* to sub-section (2) of section 65;

(g) the form of certificate of registration under sub-section (3) of section 65;

(h) the form of application, the details, the fees to be accompanied with it under sub-section (1) of section 66;

(i) the form of certificate of provisional registration containing particulars and information under sub-section (4) of section 66;

(j) the fees for renewal of registration under sub-section (11) of section 66;

(k) the person or persons (including representatives of the local community) for the purpose of conducting an audit of the registered mental health establishments under sub-section (1) and fees to be charged by the Authority for conducting such audit under sub-section (2) of section 67;

(l) the person or persons for the purpose of conducting and inspection or inquiry of the mental health establishments under sub-section (1) of section 68;

(m) the manner to enter and search of a mental health establishment operating without registration under sub-section (6) of section 68;

(n) the fees for issuing a duplicate certificate under sub-section (2) of section 70;

(o) the form and manner in which the Authority shall maintain in digital format a register of mental health establishments, the particulars of the certificate of registration so granted in a separate register to be maintained under section 71;

(p) constitution of the Boards under sub-section (3) of section 73;

(q) the honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board under sub-section (8) of section 75;

(r) method, modalities and procedure for transfer of prisoners under sub-section (2) of section 103;

(s) the standard and procedure to which the Central or State Health Authority shall confirm under sub-section (6) of section 103;

(t) the form for furnishing periodical information under section 110; and

(u) any other matter which is required to be, or may be, specified by rules or in respect for which provision is to be made by rules.

122. (1) The Central Authority may, by notification, make regulations, consistent with the provisions of this Act and the rules made thereunder, to carry out the provisions of this Act.

Power of
Central
Authority to
make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) manner of making an advance directive under section 6;

(b) additional regulations, regarding the procedure of advance directive to protect the rights of persons with mental illness under sub-section (3) of section 12;

(c) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority under sub-section (3) of section 40;

(d) the times and places of meetings of the Central Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 44;

(e) the minimum standards of facilities and services under clause (a) of sub-section (4) of section 65;

(f) the minimum qualifications for the personnel engaged in mental health establishment under clause (b) of sub-section (4) of section 65;

(g) provisions for maintenance of records and reporting under clause (c) of sub-section (4) of section 65;

(h) any other conditions under clause (d) of sub-section (4) of section 65;

(i) categories of different mental health establishment under clause (a) of sub-section (5) of section 65;

(j) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;

(k) manner of submitting evidence under sub-section (13) of section 66;

(l) the manner of filing objections under sub-section (14) of section 66;

(m) the time and places and rules of procedure in regard to the transaction of business at its meetings to be observed by the Central Authority and the Board under section 87;

(n) regulations under sub-section (2) of section 96 and under sub-section (8) of section 97;

(o) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Power of
State
Authority to
make
regulations.

123. (1) The State Authority may, by notification, make regulations, consistent with the provision of this Act and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the minimum quality standards of mental health services under sub-section (9) of section 18;

(b) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of the chief executive officer and other officers and employees of the State Authority under sub-section (3) of section 52;

(c) the manner in which the State Authority shall publish the list of registered mental health professionals under clause (d) of sub-section (1) of section 55;

(d) the times and places of meetings of the State Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 56;

(e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;

(f) the manner of filing objections under sub-section (14) of section 66;

(g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Laying of
rules and
regulations.

124. (1) Every rule made by the Central Government and every regulation made by the Central Authority under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulation, as the case may be, should not be made, the rule or regulation, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation, as the case may be.

(2) Every rule made by the State Government and every regulation made by the State Authority under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to
remove
difficulties.

125. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

14 of 1897.

126. (1) The Mental Health Act, 1987 is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or declaration made or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the Central Authority for Mental Health Services, and the State Authority for Mental Health Services established under the repealed Act shall, continue to function under the corresponding provisions of this Act, unless and until the Central Authority and the State Authority are constituted under this Act;

(c) any person appointed in the Central Authority for Mental Health Services, or the State Authority for Mental Health Services or any person appointed as the visitor under the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold their respective offices under the corresponding provisions of this Act, unless they are removed or until superannuated;

(d) any person appointed under the provisions of the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold his office under the corresponding provisions of this Act, unless they are removed or until superannuated;

(e) any licence granted under the provisions of the repealed Act, shall be deemed to have been granted under the corresponding provisions of this Act unless the same are cancelled or modified under this Act;

(f) any proceeding pending in any court under the repealed Act on the commencement of this Act may be continued in that court as if this Act had not been enacted;

(g) any appeal preferred from the order of a Magistrate under the repealed Act but not disposed of before the commencement of this Act may be disposed of by the court as if this Act had not been enacted.

10 of 1897.

(3) The mention of the particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

DR. G. NARAYANARAJU,
Secretary to the Govt. of India.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 12th April, 2017/Chaitra 22, 1939 (Saka)

The following Act of Parliament received the assent of the President on the 12th April, 2017, and is hereby published for general information:—

THE EMPLOYEE'S COMPENSATION (AMENDMENT) ACT, 2017
No. 11 OF 2017

[12th April, 2017.]

An Act further to amend the Employee's Compensation Act, 1923.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employee's Compensation (Amendment) Act, 2017.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

8 of 1923.

2. In the Employee's Compensation Act, 1923 (hereinafter referred to as the principal Act), after section 17, the following section shall be inserted, namely:—

Insertion of new section 17A.

"17A. Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee."

Duty of employer to inform employee of his rights.

3. In the principal Act, in section 18A, in sub-section (1),—

Amendment of section 18A.

(i) in clause (d), for the word and figures "section 16," the words and figures "section 16, or" shall be substituted;

(ii) after clause (d), the following clause shall be inserted, namely:—

"(e) fails to inform the employee of his rights to compensation as required under section 17A,";

(iii) in the long line, for the words "which may extend to five thousand rupees", the words "which shall not be less than fifty thousand rupees but which may extend to one lakh rupees" shall be substituted.

Amendment of
section 30.

4. In the principal Act, in section 30, in sub-section (1), in the first proviso, for the words "three hundred rupees", the words "ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify" shall be substituted.

Omission of
section 30A.

5. Section 30A of the principal Act shall be omitted.

DR. G. NARAYANARAJU,
Secretary to the Govt. of India.

CORRIGENDUM

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (No. 44 of 2016), as Published in the Gazette of India, Extraordinary, Part II, Section 1, Issue No. 51, dated the 16th August, 2016, at page NO. 2, in line 13, *for* " "securitisation or" " *read* " "securitisation company or" ".

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 12th April, 2017/Chaitra 22, 1939 (Saka)

The following Act of Parliament received the assent of the President on the 12th April, 2017, and is hereby published for general information:—

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

No. 12 OF 2017

[12th April, 2017.]

An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Central Goods and Services Tax Act, 2017.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commencement.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) “actionable claim” shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;

4 of 1882.

(2) “address of delivery” means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;

(3) “address on record” means the address of the recipient as available in the records of the supplier;

(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;

(5) “agent” means a person, including a factor, broker, commission agent, *arhatia*, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

(6) “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land—

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;

(8) “Appellate Authority” means an authority appointed or authorised to hear appeals as referred to in section 107;

(9) “Appellate Tribunal” means the Goods and Services Tax Appellate Tribunal constituted under section 109;

(10) “appointed day” means the date on which the provisions of this Act shall come into force;

(11) “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;

(12) “associated enterprises” shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;

43 of 1961.

(13) “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

(14) “authorised bank” shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;

(15) “authorised representative” means the representative as referred to in section 116;

54 of 1963.

(16) “Board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(17) “business” includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

(18) “business vertical” means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

Explanation.—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—

(a) the nature of the goods or services;

(b) the nature of the production processes;

(c) the type or class of customers for the goods or services;

(d) the methods used to distribute the goods or supply of services; and

(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

(19) “capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

(20) “casual taxable person” means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;

(21) “central tax” means the central goods and services tax levied under section 9;

(22) “cess” shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;

(23) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949; 38 of 1949.

(24) “Commissioner” means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;

(25) “Commissioner in the Board” means the Commissioner referred to in section 168;

(26) “common portal” means the common goods and services tax electronic portal referred to in section 146;

(27) “common working days” in respect of a State or Union territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union territory Government;

(28) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980; 56 of 1980.

(29) “competent authority” means such authority as may be notified by the Government;

(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

(31) “consideration” in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

(32) “continuous supply of goods” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

(33) “continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

(34) “conveyance” includes a vessel, an aircraft and a vehicle;

23 of 1959.

(35) “cost accountant” means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

(36) “Council” means the Goods and Services Tax Council established under article 279A of the Constitution;

(37) “credit note” means a document issued by a registered person under sub-section (1) of section 34;

(38) “debit note” means a document issued by a registered person under sub-section (3) of section 34;

(39) “deemed exports” means such supplies of goods as may be notified under section 147;

(40) “designated authority” means such authority as may be notified by the Board;

21 of 2000.

(41) “document” includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000;

(42) “drawback” in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;

(43) “electronic cash ledger” means the electronic cash ledger referred to in sub-section (1) of section 49;

(44) “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;

(45) “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

(46) “electronic credit ledger” means the electronic credit ledger referred to in sub-section (2) of section 49;

(47) “exempt supply” means supply of any goods or services or both which attracts *nil* rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

(48) “existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

(49) “family” means,—

(i) the spouse and children of the person, and

(ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

(50) “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

(51) “Fund” means the Consumer Welfare Fund established under section 57;

(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

(53) “Government” means the Central Government;

(54) “Goods and Services Tax (Compensation to States) Act” means the Goods and Services Tax (Compensation to States) Act, 2017;

(55) “goods and services tax practitioner” means any person who has been approved under section 48 to act as such practitioner;

(56) “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;

80 of 1976.

(57) “Integrated Goods and Services Tax Act” means the Integrated Goods and Services Tax Act, 2017;

(58) “integrated tax” means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;

(59) “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(60) “input service” means any service used or intended to be used by a supplier in the course or furtherance of business;

(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

(62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

(63) “input tax credit” means the credit of input tax;

(64) “intra-State supply of goods” shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

(65) “intra-State supply of services” shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

(66) “invoice” or “tax invoice” means the tax invoice referred to in section 31;

(67) “inward supply” in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

(68) “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

(69) “local authority” means—

(a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;

(b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

(70) “location of the recipient of services” means,—

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

(71) “location of the supplier of services” means,—

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

(72) “manufacture” means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly;

(73) “market value” shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a

single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

(75) “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(76) “motor vehicle” shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

59 of 1988.

(77) “non-resident taxable person” means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;

(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

(79) “non-taxable territory” means the territory which is outside the taxable territory;

(80) “notification” means a notification published in the Official Gazette and the expressions “notify” and “notified” shall be construed accordingly;

(81) “other territory” includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114) ;

(82) “output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

(83) “outward supply” in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

(84) “person” includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

18 of 2013.

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

21 of 1860.

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

(85) “place of business” includes—

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

(86) “place of supply” means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

(87) “prescribed” means prescribed by rules made under this Act on the recommendations of the Council;

(88) “principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

(89) “principal place of business” means the place of business specified as the principal place of business in the certificate of registration;

(90) “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

(91) “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

(92) “quarter” shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

(93) “recipient” of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

(94) “registered person” means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

(95) “regulations” means the regulations made by the Board under this Act on the recommendations of the Council;

(96) “removal” in relation to goods, means—

(a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

(97) “return” means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;

(98) “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;

(99) “Revisional Authority” means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

(100) “Schedule” means a Schedule appended to this Act;

(101) “securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(103) “State” includes a Union territory with Legislature;

(104) “State tax” means the tax levied under any State Goods and Services Tax Act;

(105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

(106) “tax period” means the period for which the return is required to be furnished;

(107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24;

(108) “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act;

(109) “taxable territory” means the territory to which the provisions of this Act apply;

(110) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;

(111) “the State Goods and Services Tax Act” means the respective State Goods and Services Tax Act, 2017;

(112) “turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory

tax, integrated tax and cess;

(113) “usual place of residence” means—

(a) in case of an individual, the place where he ordinarily resides;

(b) in other cases, the place where the person is incorporated or otherwise legally constituted;

(114) “Union territory” means the territory of—

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Chandigarh; and

(f) other territory.

Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

(115) “Union territory tax” means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;

(116) “Union Territory Goods and Services Tax Act” means the Union Territory Goods and Services Tax Act, 2017;

(117) “valid return” means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;

(118) “voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

(120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

(121) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

CHAPTER II

ADMINISTRATION

3. The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:—

Officers under this Act.

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(b) Chief Commissioners of Central Tax or Directors General of Central Tax,

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act. 1 of 1944.

Appointment
of officers.

4. (1) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

Powers of
officers.

5. (1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

Authorisation
of officers of
State tax or
Union
territory tax
as proper
officer in
certain
circumstances.

6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

CHAPTER III

LEVY AND COLLECTION OF TAX

7. (1) For the purposes of this Act, the expression “supply” includes—

Scope of supply.

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

Tax liability on composite and mixed supplies.

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Levy and collection.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Composition
levy.

10. (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

(a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,

(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

(2) The registered person shall be eligible to opt under sub-section (1), if:—

(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;

(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods;

(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

(3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

(4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

11. (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

Power to grant exemption from tax.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

CHAPTER IV

TIME AND VALUE OF SUPPLY

12. (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

Time of supply of goods.

(2) The time of supply of goods shall be the earlier of the following dates, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Time of supply
of services.

13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

14. Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—

(a) in case the goods or services or both have been supplied before the change in rate of tax,—

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the goods or services or both have been supplied after the change in rate of tax,—

Change in rate of tax in respect of supply of goods or services.

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.—For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Value of
taxable
supply.

15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

- (i) such persons are officers or directors of one another’s businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

(b) the term “person” also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

CHAPTER V

INPUT TAX CREDIT

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Eligibility and conditions for taking input tax credit.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a

period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

43 of 1961.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Apportionment
of credit and
blocked
credits.

17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

18. (1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such

Availability of credit in special circumstances.

registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

19. (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

Taking input tax credit in respect of inputs and capital goods sent for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, “principal” means the person referred to in section 143.

20. (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

Manner of distribution of credit by Input Service Distributor.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

(a) the “relevant period” shall be—

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression “recipient of credit” means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term “turnover”, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Manner of recovery of credit distributed in excess.

21. Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.

CHAPTER VI

REGISTRATION

Persons liable for registration.

22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal

or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.—For the purposes of this section,—

(i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

23. (1) The following persons shall not be liable to registration, namely:—

Persons not
liable for
registration.

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

Compulsory
registration in
certain cases.

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) person who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

(x) every electronic commerce operator;

(xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

25. (1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within

Procedure for
registration.

thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation.—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 in order to be eligible for grant of registration:

43 of 1961.

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),—

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

46 of 1947.

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

26. (1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

Deemed registration.

(2) Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

27. (1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

Special provisions relating to casual taxable person and non-resident taxable person.

Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.

(2) A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under section 49.

28. (1) Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.

Amendment of registration.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

29. (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the

Cancellation of registration.

registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

30. (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

Revocation
of
cancellation
of
registration.

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

CHAPTER VII

TAX INVOICE, CREDIT AND DEBIT NOTES

31. (1) A registered person supplying taxable goods shall, before or at the time of,— Tax invoice.

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(b) tax invoice may not be issued.

(3) Notwithstanding anything contained in sub-sections (1) and (2)—

(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

(4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation.—For the purposes of this section, the expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Prohibition of unauthorised collection of tax.

32. (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

(2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

Amount of tax to be indicated in tax invoice and other documents.

33. Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

Credit and debit notes.

34. (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation.—For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

CHAPTER VIII

ACCOUNTS AND RECORDS

35. (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of— Accounts and other records.

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant

and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

Period of retention of accounts.

36. Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

CHAPTER IX

RETURNS

Furnishing details of outward supplies.

37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a

short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation.—For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

38. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

Furnishing
details of
inward
supplies.

(2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

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Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Furnishing of
returns.

39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

40. Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

First return.

41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

Claim of input tax credit and provisional acceptance thereof.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

42. (1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

Matching, reversal and reclaim of input tax credit.

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “supplier”) in his valid return for the same tax period or any preceding tax period;

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(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

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(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Matching, reversal and reclaim of reduction in output tax liability.

43. (1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the “supplier”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the “recipient”) in his valid return for the same tax period or any subsequent tax period; and

(b) for duplication of claims for reduction in output tax liability.

(2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in such manner as may be prescribed, to the supplier.

(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A supplier in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.

(10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

44. (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year. Annual return.

(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

45. Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed. Final return.

46. Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed. Notice to return defaulters.

47. (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. Levy of late fee.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

48. (1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed. Goods and services tax practitioners.

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

CHAPTER X

PAYMENT OF TAX

49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed. Payment of tax, interest, penalty and other amounts.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

Interest on
delayed
payment of
tax.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

51. (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

Tax deduction
at source.

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Collection of
tax at source.

52. (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation.—For the purposes of this sub-section, the expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in

his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,

as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.—For the purposes of this section, the expression “concerned supplier” shall mean the supplier of goods or services or both making supplies through the operator.

53. On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

Transfer of
input tax
credit.

CHAPTER XI

REFUNDS

54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Refund of tax.

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

(1) “refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) “relevant date” means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

Refund in
certain cases.

55. The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

46 of 1947.

Interest on
delayed
refunds.

56. If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in

respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

57. The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

Consumer Welfare Fund.

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it,

in such manner as may be prescribed.

58. (1) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

Utilisation of Fund.

(2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

CHAPTER XII

ASSESSMENT

59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Self-assessment.

60. (1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

Provisional assessment.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual

payment, whether such amount is paid before or after the issuance of order for final assessment.

(5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Scrutiny of
returns.

61. (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Assessment of
non-filers of
returns.

62. (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Assessment of
unregistered
persons.

63. Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Summary
assessment in
certain
special cases.

64. (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

CHAPTER XIII

AUDIT

65. (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

Audit by tax authorities.

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

66. (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

Special audit.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

CHAPTER XIV

INSPECTION, SEARCH, SEIZURE AND ARREST

Power of inspection, search and seizure.

67. (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an

authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

2 of 1974.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

68. (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

Inspection of goods in movement.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

69. (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of

Power to arrest.

sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Power to
summon
persons to
give evidence
and produce
documents.

70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

5 of 1908

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

Access to
business
premises.

71. (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

18 of 2013.

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and

43 of 1961.

(vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Officers to
assist proper
officers.

72. (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

CHAPTER XV

DEMANDS AND RECOVERY

73. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.

74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

75. (1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

General provisions relating to determination of tax.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate

Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Tax collected
but not paid to
Government.

76. (1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

77. (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

Tax
wrongfully
collected and
paid to
Central
Government
or State
Government.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

78. Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Initiation of
recovery
proceedings.

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

79. (1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

Recovery of
tax.

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed

to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

2 of 1974.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

80. On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Payment of tax and other amount in instalments.

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

81. Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Transfer of property to be void in certain cases.

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

31 of 2016.

82. Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Tax to be first charge on property.

83. (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

Provisional attachment to protect revenue in certain cases.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

84. Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

Continuation and validation of certain recovery proceedings.

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings—

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may

be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

CHAPTER XVI

LIABILITY TO PAY IN CERTAIN CASES

Liability in
case of transfer
of business.

85. (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

Liability of
agent and
principal.

86. Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Liability in
case of
amalgamation
or merger of
companies.

87. (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

(2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

Liability in
case
of company
in
liquidation.

88. (1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Liability of
directors of
private
company.

89. (1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the

payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

90. Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Liability of partners of firm to pay tax.

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

91. Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

Liability of guardians, trustees, etc.

92. Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

Liability of Court of Wards, etc.

31 of 2016.

93. (1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then—

Special provisions regarding liability to pay tax, interest or penalty in certain cases.

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

31 of 2016.

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

31 of 2016.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,—

31 of 2016.

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or

(b) is a trustee who carries on the business under a trust for a beneficiary,

then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

Liability in
other cases.

94. (1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.—For the purposes of this Chapter,—

- 6 of 2009.
- (i) a “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
 - (ii) “court” means the District Court, High Court or Supreme Court.

CHAPTER XVII

ADVANCE RULING

95. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;

(c) “applicant” means any person registered or desirous of obtaining registration under this Act;

(d) “application” means an application made to the Authority under sub-section (1) of section 97;

(e) “Authority” means the Authority for Advance Ruling referred to in section 96.

96. Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Authority for advance ruling.

97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

Application for advance ruling.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

98. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Procedure on receipt of application.

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Appellate
Authority for
Advance
Ruling.

99. Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Appeal to
Appellate
Authority.

100. (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Orders of
Appellate
Authority.

101. (1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the

applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

102. The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Rectification
of advance
ruling.

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

103. (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

Applicability
of advance
ruling.

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

104. (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Advance
ruling to be
void in
certain
circumstances.

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

105. (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—

Powers of
Authority
and Appellate
Authority.

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath;

(c) issuing commissions and compelling production of books of account and other records,

5 of 1908. have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

2 of 1974.

45 of 1860.

106. The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

Procedure of
Authority and
Appellate
Authority.

CHAPTER XVIII

APPEALS AND REVISION

Appeals to
Appellate
Authority.

107. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

108. (1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order

Powers of
Revisional
Authority.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if—

(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term,—

(i) “record” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;

(ii) “decision” shall include intimation given by any officer lower in rank than the Revisional Authority.

Constitution
of Appellate
Tribunal and
Benches
thereof.

109. (1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

110. (1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(b) a Judicial Member, unless he—

(i) has been a Judge of the High Court; or

(ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or

President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

(iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.

(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.

(6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.

(9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.

(10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:

Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President, State President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) Without prejudice to the provisions of sub-section (13),—

(a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;

(b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.

(15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench

or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).

(16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).

(17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

Procedure
before
Appellate
Tribunal.

111. (1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

5 of 1908.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

1 of 1872.

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding *itex parte*;

(g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Appeals to
Appellate
Tribunal.

112. (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory

Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, in relation to which the appeal has been filed.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,—

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by such fees as may be prescribed.

Orders of
Appellate
Tribunal.

113. (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Financial and
administrative
powers of
President.

114. The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

Interest on
refund of
amount paid
for admission
of appeal.

115. Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Appearance
by authorised
representative.

116. (1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this Act, the expression “authorised representative” shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(3) No person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent,

shall be qualified to represent any person under sub-section (1)—

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

117. (1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law

Appeal to
High Court.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which—

(a) has not been determined by the State Bench or Area Benches; or

(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section. 5 of 1908.

Appeal to
Supreme
Court.

118. (1) An appeal shall lie to the Supreme Court—

(a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court. 5 of 1908.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

Sums due to
be paid
notwithstanding
appeal, etc.

119. Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

Appeal not to
be filed in
certain cases.

120. (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the

officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

121. Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—

Non-appealable decisions and orders.

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under this Act; or

(d) an order passed under section 80.

CHAPTER XIX

OFFENCES AND PENALTIES

122. (1) Where a taxable person who—

Penalty for certain offences.

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- (xix) issues any invoice or document by using the registration number of another registered person;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

- (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
- (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who—

- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty-five thousand rupees.

123. If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Penalty for failure to furnish information return.

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

124. If any person required to furnish any information or return under section 151,—

(a) without reasonable cause fails to furnish such information or return as may be required under that section, or

Fine for failure to furnish statistics.

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

125. Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

General penalty.

126. (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

General disciplines related to penalty.

Explanation.—For the purpose of this sub-section,—

(a) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

127. Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or

Power to impose penalty in certain cases.

section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Power to
waive penalty
or fee or both.

128. The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Detention,
seizure and
release of
goods and
conveyances
in transit.

129. (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

Confiscation
of goods or
conveyances
and levy of
penalty.

130. (1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

131. Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

Confiscation or penalty not to interfere with other punishments.

132. (1) Whoever commits any of the following offences, namely:—

Punishment for certain offences.

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b);

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

2 of 1974.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

133. (1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

Liability of officers and certain other persons.

(2) Any person—

(a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;

(b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

134. No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

Cognizance of offences.

135. In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Presumption of culpable mental state.

Explanation.—For the purposes of this section,—

(i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;

(ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

136. A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

Relevancy of statements under certain circumstances.

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Offences by companies.

137. (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or *karta* or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, *mutatis mutandis*, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation.—For the purposes of this section,—

(i) “company” means a body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

Compounding of offences.

138. (1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (1) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

CHAPTER XX

TRANSITIONAL PROVISIONS

139. (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

Migration of existing taxpayers.

(2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.

(3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Transitional arrangements for input tax credit.

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

1 of 1944.
32 of 1994.

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression “eligible duties” means—

58 of 1957. (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

51 of 1975. (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

51 of 1975. (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;

- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978; 40 of 1978.
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985; 5 of 1986.
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and 5 of 1986.
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, 14 of 2001.

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.—For the purposes of sub-section (5), the expression “eligible duties and taxes” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957; 58 of 1957.
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975; 51 of 1975.
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975; 51 of 1975.
- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978; 40 of 1978.
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985; 5 of 1986.
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; 5 of 1986.
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and 14 of 2001.
- (viii) the service tax leviable under section 66B of the Finance Act, 1994, 32 of 1994.

in respect of inputs and input services received on or after the appointed day.

Transitional provisions relating to job work.

141. (1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as “the said goods”) are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

142. (1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Miscellaneous
transitional
provisions.

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

(2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

(b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

1 of 1944.

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

1 of 1944.

(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

1 of 1944.

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

(b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(7) (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any

amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

1 of 1944. (b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

1 of 1944. (b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

1 of 1944. (b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

32 of 1994. (b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

32 of 1994. (c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

(12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

(13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation.—For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) credit”, “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.

1 of 1944.

CHAPTER XXI

MISCELLANEOUS

Job work
procedure.

143. (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

(i) where the job worker is registered under section 25; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance

with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker

144. Where any document—

(i) is produced by any person under this Act or any other law for the time being in force; or

(ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force,

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

145. (1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or

(d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further

Presumption
as to
documents in
certain cases.

Admissibility
of micro
films,
facsimile
copies of
documents and
computer
printouts as
documents and
as evidence.

proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Common
Portal.

146. The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

Deemed
exports.

147. The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Special
procedure for
certain
processes.

148. The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

Goods and
services tax
compliance
rating.

149. (1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

(2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

Obligation to
furnish
information
return.

150. (1) Any person, being—

(a) a taxable person; or

(b) a local authority or other public body or association; or

(c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or

(d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or

43 of 1961.

(e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or

2 of 1934.

(f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or

36 of 2003.

- 16 of 1908. (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- 18 of 2013. (h) a Registrar within the meaning of the Companies Act, 2013; or
- 59 of 1988. (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
- 30 of 2013. (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- 42 of 1956. (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- 22 of 1996. (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- 2 of 1934. (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
- 18 of 2013. (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
- (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
- (p) any other person as may be specified, on the recommendations of the Council, by the Government,

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

(2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

151. (1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.

Power to collect statistics.

(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected .

Bar on disclosure of information.

152. (1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

Taking assistance from an expert.

153. Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

Power to take samples.

154. The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

Burden of proof.

155. Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Persons deemed to be public servants. Protection of action taken under this Act.

156. All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

157. (1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

Disclosure of information by a public servant.

158. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

1 of 1872.

(3) Nothing contained in this section shall apply to the disclosure of,—

(a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or

45 of 1860.
49 of 1988.

(b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or

(c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or

(d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or

(e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or

(f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or

(g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or

(h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or

(i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or

(j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

(k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or

(l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

159. (1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

Publication of information in respect of persons in certain cases.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

160. (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any

Assessment proceedings, etc., not to be invalid on certain grounds.

mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Rectification
of errors
apparent on
the face of
record.

161. Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Bar on
jurisdiction of
civil courts.

162. Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

Levy of fee.

163. Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.

Power of
Government
to make rules.

164. (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

Power to make
regulations.

165. The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

Laying of
rules,
regulations
and
notifications.

166. Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

167. The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

Delegation of powers.

168. (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

Power to issue instructions or directions.

(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (1) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

169. (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

Service of notice in certain circumstances.

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Rounding off
of tax, etc.

170. The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

Anti-
profiteering
measure.

171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

Removal of
difficulties.

172. (1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

Amendment
of Act 32 of
1994.

173. Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

Repeal and
saving.

174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

1 of 1944.

16 of 1955.

58 of 1957.

40 of 1978.

5 of 1986.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

32 of 1994.

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

(a) any transfer of the title in goods is a supply of goods;

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

20 of 1972.

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS
NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

Explanation.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

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